

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL **77-7017**

United States Court of Appeals

For the Second Circuit.

PETER RUFFINO,
Plaintiff-Appellant,

against

SCINDIA STEAM NAVIGATION CO., LTD.,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF
THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

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(GP 77-314-1238)

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DeSchino, Salvatore:

[illegible]

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[illegible]

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[illegible]

CIVIL DOCKET
UNITED STATES DISTRICT COURT

1a
DOCKET ENTRIES

JUDGE GAGLIARDI

Jury demand date:

75 CIV. 4198

D. C. Form No. 106 Rev.

208-1 75-4193 TITLE OF CASE 08-22-75 4 340 1 12 1,000. ATTORNEY'S 0854 P. hmc

PETER RUFFINO

pltff

vs.

SCINDIA STEAM NAVIGATION CO. LTD.
deft.

For plaintiff:

Zimmerman & Zimmerman

160 Bway, NY, NY 10038 BA 7-1350

For defendant:

Haight, Gardner, Poor & Havens

One State St. Plaza, NY 10004 DI 4-6800

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISP.

J.S. 5 mailed x

Clerk

AUG 22 1975

J.S. 6 mailed 10-20-76

Marshal

Basis of Action: Personal In-
jury-Longshoreman. \$1,000,000.

Docket fee

Witness fees

Action arose at:

Depositions

75 Civ.4193 PETER RUFFINO VS. SCINDIA STEAM NAVIGATION CO., LTD.

75 24 41

DATE

PROCEEDINGS

Date Order
Judge's Court

08-22-75 ① Filed Complaint Issued Summons Demand trial by jury.

09-05-75 A Filed Summons with Marshall's Return Served U.S. Navigation Co. by George DeLoohan, B/26/75

12-4-75 PRE-TRIAL CONFERENCE HELD

03-03-76 B Filed Deft's Interrogs.

03-03-76 M Filed " ANSWER to complaint.

03-03-76 G Filed " Notice to take exam before trial of plttf.

03-10-76 G Filed Order that parties complete all pretrial proceedings within 90 days from date of order, etc. Gagliardi, J(mn)

03-26-76 X Filed Deft Sol Goldman Suggestion of death of party with Affidvt of service by mail, by Joan Belz upon attys for plttfs.

03-09-76 Y Filed Deft's Amended Answer to complaint.

12-03-76 PRE-TRIAL CONFERENCE HELD

03-10-76 FILED

06-08-76 P Filed Deft's affdvt notice of motion re: order compelling plttf to answer interrogs. by Deft. ret. 6/22/76, 4:00 p.m.

06-23-76 P Filed Stip & Order adjourning motion of deft compelling plttf to answer interrogs one week to 6/29/76, 4:00 p.m. Time parties to complete pre-trial proceedings & date upon which case will be placed on Court's trial calendar to addl, 30 days. Gagliardi, J.

07-01-76 P Filed stip & order that deft's motion Re: interrogs is adj. from 6-22-76 to 7-13-76. Gagliardi, J.

06-29-76 M Filed plttf's answers to interrogs.

07-30-76 P Filed Deft's notice to take deposition of Pittston Stevedoring Corp. Issued Subp.

10-04-76 G Filed Deft's notice to take deposition of Joseph Green. Subpoena issued.

10-04-76 M Filed " " " " " " Ulhas K.B.Rao.

10-08-76 M Filed Plttf's request to charge.

10-12-76 Trial begun before Gagliardi, J with Jury.

10-13-76 " contd.

10-14-76 " "

10-15-76 " " and concluded . Jury returned with verdict for plttf in sum of \$60,000.

10-21-76 P Filed deft's notice of motion re: order pur. Rule 50(b) ret: 11-2-76.

10-21-76 M Filed deft's memo. of law re: support of motion for order pur Rule 50(b).

10-20-76 G Filed JUDGMENT #76,941 Ordered that plttf have judgment against deft. in amt of \$60,000. Clk (mn)

11-09-76 P Filed plttf's affdvt in opposition to deft's motion for directed verdict or for judgment N.O.V.

11-09-76 M Filed Plttf's Memorandum Law.

11-15-76 P Filed Reply affdvt of William P.Kain, Jr. for deft in opposition to deft's motion for directed verdict or for judgment notwithstanding jury verdict.

11-15-76 P Filed Deft's reply Memorandum.

12-13-76 P Filed Order and Judgment. Ordered that Judgment of Court #76941 in favor of Plttf in amt of \$60,000 is vacated. Ordered that complaint be dis-missed with prejudice and costs. Gagliardi, J. (mn)

BEST COPY AVAILABLE

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
PETER RUFFINO,

Plaintiff

75 Civ. 4193 (LPG)

-against-

NOTICE OF APPEAL

SCINDIA STEAM NAVIGATION CO., LTD.,

Defendant.
----- x

NOTICE is hereby given that plaintiff, PETER RUFFINO, above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of this Court dated December 10, 1976 rendered by the Honorable Lee P. Gagliardi, United States District Judge, on defendant, SCINDIA STEAM NAVIGATION CO., LTD., Rule 50 (b) FRCP motion for judgment notwithstanding the verdict which Order vacated Judgment #76941 of this Court entered in favor of the plaintiff, PETER RUFFINO, against defendant, SCINDIA STEAM NAVIGATION CO., LTD. upon a jury verdict in the sum of SIXTY THOUSAND (\$60,000.00) DOLLARS, and dismissed the complaint of the plaintiff, PETER RUFFINO against SCINDIA STEAM NAVIGATION CO., LTD. on the merits with prejudice and with costs.

Dated, New York, New York
January 5, 1977.

ZIMMERMAN & ZIMMERMAN
Attorneys for Plaintiff

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TO: Haight, Gardner, Poor & Havens
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wcl

Ruffino - Direct

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AFTERNOON SESSION

1:30 p.m.

(In open court; jury present.)

MR. KAIN: If your Honor please, before we commence may we have fact witnesses excluded from the courtroom?

THE COURT: Yes. They may sit in the witness room or out in the corridor there. There are some more benches outside.

MR. LASSOFF: Mr. Green, will you sit outside for a while. You are not allowed to be here while Mr. Ruffino is testifying. We have already put Mr. Ruffino in the box, your Honor.

THE COURT: Yes. Actually I like the witness on the stand before the jury comes in. So it saves that time. All right.

P E T E R . R U F F I N O, called as a witness in his own behalf, being first duly sworn, testified as follows:

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. LASSOFF:

Q Mr. Ruffino, do you remember the 29th day of

1 wclk Ruffino - Direct

21

2 January, 1974?

3 A Yes.

4 MR. KAIN: If your Honor please, may I ask
5 counsel not to lead the witness as to dates and places?

6 THE COURT: Well, up to a certain extent I will
7 permit it. All right.

8 Q Did you meet with an accident on that day?

9 A Yes.

10 Q Would you try to speak closer to the microphone
11 and keep your voice up.

12 When this accident occurred were you working?

13 A I was working.

14 Q Who were you working for?

15 A Pittston Stevedore.

16 Q What was your job?

17 A I was discharging on a ship.

18 Q Were you a longshoreman?

19 A Yes.

20 Q What ship were you working on?

21 A The JALAJYOTI.

22 Q Were you working in a particular cargo compart-
23 ment of that ship?

24 A Yes.

25 Q Which one?

1 wclk Ruffino - Direct

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2 A #6 hatch.

3 Q Was that the first day that you had worked
4 in #6 hatch of the JALAJYOTI?

5 A First day, yes.

6 Q Had you worked on board that same ship the day
7 before the accident?

8 A Yes.

9 Q Where had you worked the day before?

10 A #3 hatch.

11 Q What time did you board the JALAJYOTI on
12 January 29, 1974?

13 A Around 8:10, 8:15.

14 Q When you went on board this ship, were you
15 assigned to the #6 hatch to work?

16 A Yes.

17 Q When you got on board the ship, was the hatch
18 open or was it closed?

19 A It was closed.

20 Q How was it opened?

21 A The crew opened it up.

22 Q What did they do to open it up?

23 A They rigged the booms up and they opened it up.
24 Hydraulically, I guess.

25 Q The cover of the #6 hatch, is that something

wcl k Ruffino - Direct

23

called a McGregor hatch cover?

A Yes.

Q Does that open up by pulling on wires that fold up the pontoons?

A Yes.

Q And then these pontoons stand upright during the course of discharge, they are not taken off the hatch?

A That is right.

Q What deck level of the #6 hatch were you sent to work in?

A Upper 'tween deck.

Q Is that the deck immediately below where the McGregor hatch covers are?

A Yes.

Q Were you going to load or discharge cargo on that day?

A Discharge.

Q About what time did you go down into the upper 'tween deck of the #6 hatch.

A I'd say around 8:30.

Q When you got into the upper 'tween deck of the #6 hatch, was there any cargo in the square of the hatch?

A Yes.

Q What cargo was there?

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Ruffino - Direct

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A There was pallets of tea, skids of tea, and some rugs rolled up.

Q What did you start discharging, first of all?

A Skids of tea.

Q Would you give us the approximate dimensions of a skid of tea?

A I'd say about five and a half feet high, about two and a half feet, three feet wide.

Q How long?

A Excuse me?

Q How long?

A How long?

Q How long is the skid?

A Oh. About five and a half feet long.

Q The tea that was on the skids, how was that packaged?

A It was strapped.

Q Was the tea loose tea or was it in some kind of a cargo container?

A No, it wasn't loose. It was strapped to a skid.

Q Was it inside cartons?

A Yes.

Q Were the cartons strapped to the skid?

A Yes.

1 wcl

Ruffino - Direct

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2 Q Did you commence to discharge these skids of
3 tea from the square of the hatch?

4 A Yes.

5 Q What equipment did you use to do that?

6 A Wires.

7 Q When you say wires, would you tell the jury
8 what you mean?

9 A Well, they have --

10 Q Relax. Relax a minute.

11 A They have twelve-foot wires and eighteen-foot
12 wires. I wouldn't know exactly how long the wires were,
13 but we used them to grab each side of the skid, pick it
14 up.

15 Q Did you pick it up or did the ship's cargo
16 machinery pick up the skid?

17 A The ship's boom picked it up.

18 Q Did there come a time when you finished with
19 the cargo in the square of the hatch?

20 A Yes.

21 Q About what time was that?

22 A I'd say around 9:30.

23 Q That is in the morning you are talking about
24 now?

25 A Yes, sir.

wclk

Ruffino - Direct

26

Q At 9:30 in the morning, after you finished the discharge of the square of the hatch, where did you then work in that hatch?

A In the wing.

Q Which wing?

A Inshore wing.

Q If you were standing on the ship looking towards the bow or front of the ship, would the inshore wing be the port side of the vessel, the left-hand side?

A Yes.

Q Incidentally, how many longshoremen were working down in the hold with you at the time this accident occurred?

A Eight.

Q Including you?

A Including myself is eight.

Q Is that what is known as the hold gang?

A Yes.

Q In the longshore gang, besides the eight hold men, do you also have people known as deck men and dock men?

A Yes.

Q Were there three deck men in this case?

A Well, there are three deck men, yes.

Q Were there six dock men?

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Ruffino - Direct

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A Yes.

Q And the hatch boss?

A Yes.

Q So that a longshore gang consisted of 18 men?

A Yes.

Q Of which eight worked down in the hold dis-
charging cargo?

A At the time, yes.

Q When you had to start work in the port inshore
wing of the JALAJYOTI, what cargo was in that?

A Rugs.

Q Were the rugs --

A And tea.

Q When you say rugs on tea, do you --

THE COURT: You said rugs and tea, did you?

THE WITNESS: Rugs and tea.

MR. LASSOFF: I said that.

THE COURT: I thought you said "on."

MR. LASSOFF: No.

BY MR. LASSOFF:

Q When you say rugs and tea, were the rugs stowed
on top of the tea?

A Yes.

Q And was the tea that you were talking about, was

Ruffino - Direct

1 wcl
2 that also on skids, as you previously described?

3 A Yes.

4 Q In order to discharge the rugs, what did you
5 and your fellow workers have to do?

6 A We had to climb on top of the skids of tea to
7 get to the rugs, and climb on these rugs.

8 Q After that, you got on the rugs?

9 A We had to hand them down.

10 Q But did you have to stand on top of the rugs?

11 A Yes.

12 THE COURT: No more leading. I think that is
13 enough.

14 MR. LASSOFF: All right.

15 Q Now, the skids of tea that were in the port
16 inshore wing, were they one tier high?

17 A Yes.

18 Q Can you tell me how high were the rugs that
19 were stowed on top of the skids of tea? When you first
20 started to work the port inshore wing.

21 A I'd say about three feet.

22 Q How many rugs would that be in height on top
23 of each other, one on top of each other?

24 A Oh, about five, six, I don't recall.

25 Q Now, these rugs that you were talking about,

1 wclk

Ruffino - Direct

29

2 how were they packaged?

3 A They were in burlap.

4 Q How did you go about discharging the rugs from
5 the hatch?

6 A We had to hand them down. We had to hand these
7 rugs down into the fellows that were down below. They were
8 making slings in the square of the hatch.

9 Q After they made up, put these rugs into slings,
10 were they taken out of the hatch by the ship's cargo lifting
11 machinery?

12 A Yes.

13 Q How many rugs were being put into a sling?

14 A I'd say about five, six.

15 Q While you were there, had several drafts of
16 rugs been taken out of the hatch before your accident occur-
17 red?

18 A In the square there was some rugs that were
19 taken.

20 Q I am talking about from the wing.

21 A Yes.

22 Q And when the winches and booms of the ship
23 picked up those drafts of rugs, what, if anything, did you
24 notice about the way the rugs went up?

25 A They went up in a horseshoe figure.

wcl

Ruffino - Direct

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Q Can you show us with your hands what you mean by a horseshoe figure?

A Well, the slings were in the middle and they went up in a horseshoe.

Q In other words, they bent down on either side of the slings?

A Yes.

Q Did there come a time when you were injured while you were on top of these rugs in the --

MR. KAIN: If your Honor please --

THE COURT: Yes, sustained.

Q Did there come a time when you were injured?

A I didn't hear the question, I am sorry.

Q Did there come a time when you were hurt?

A Yes.

Q At the time you were hurt, before the accident occurred, what, if anything, were you standing on?

A Before the accident occurred?

Q Yes.

A I was standing on rugs.

Q Tell us how you got hurt.

A Well, we were handing these rugs down, me and my partner at that time, and I had to back myself to get into position to hand a rug down, because some of them were

1 well
2 pretty heavy. And we couldn't use hooks on the rug, we
3 had to do everything by hand.

4 So I was positioning myself, where my left
5 foot sank into a rug, into a hole, where I lost my balance,
6 and I fell backwards to my side.

7 Q When you say your left foot sank, did anything
8 happen to that rug?

9 A Yes, it sank with my foot. My foot sank into
10 the rug that went into a hole.

11 Q When you say it sank, what happened to the rug
12 physically?

13 A It bended when I went down.

14 Q Had you seen any hole in any of that stow prior
15 to that accident?

16 A No. We were working up there.

17 Q And you say the rug and your foot went down.
18 What happened to you after that?

19 A I lost my balance and I fell backwards.

20 Q Which way?

21 A Well, to the side of the ship, that would be
22 the inshore side.

23 Q That would be to your left?

24 A To my left, yes.

25 Q When you fell to your left, what parts of your

wclk

Ruffino - Direct

32

body, if anything, struck what part of the ship?

A I struck my head, my left elbow, my hip and my ankle.

Q All on the left side?

A Yes.

Q Do you know what happened right after the accident?

A No. All I remember is talking to Green. I was sitting on a carton in the wing.

Q Were you unconscious for any period of time after this accident?

A I could have been unconscious for five seconds, I could have been unconscious for ten seconds.

Q When you say Green, is that the gentlemen who was just asked to stay outside the courtroom while you testified?

A Yes.

Q What was done for you while you were sitting on this carton?

A Men told me to sit there and rest up a bit. And that is what I did. I sat there for a while.

Q Did there come a time when you left the ship?

A Yes.

Q When was that?

wcl

Ruffino - Direct

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Q Can you tell us about how much time you lost from work as a result of that injury?

A Three months.

Q Had you ever injured your left ankle or your left elbow in any accident before this?

A I don't remember.

Q Have you had any accidents since this accident of January 29, 1974?

A No.

Q Mr. Ruffino, you have testified that there is a guaranteed annual wage for longshoremen. In order to collect this guarantee, what does a longshoreman have to do?

MR. KAIN: I have an objection, if your Honor please. That is a provision of an ILA contract.

THE COURT: Sustained.

MR. LASSOFF: If your Honor please, this man had to do it every day of his life.

THE COURT: Sustained. I said I didn't want any argument. If there is any problem about it, we will discuss it at the next recess.

MR. LASSOFF: All right.

BY MR. LASSOFF:

Q In the course of your discharging the rugs from on top of the skids of tea in the wing, at any time during

1 walk

Ruffino - Direct

2 your discharge of the rugs did you see any dunnage,
3 plywood or any other material between the rugs and the
4 skids?

5 A No.

6 Q In order for you to discharge the rugs in
7 that port wing of the upper 'tween deck of hatch #6, was
8 it necessary for you to stand on top of the rugs?

9 A Yes.

10 Q Incidentally, these rugs that we are talking
11 about, would you tell us their approximate dimensions?

12 A I would say about one-and-a-half foot round,
13 about ten to twelve feet long.

14 Q Had I already asked you if they were packaged
15 or anything?

16 A Yes.

17 Q When you walked on top of these rugs, was there
18 anything solid in the rugs as you walked on them or did
19 something happen with --

20 MR. KAIN: If your Honor please, if they are
21 packaged I submit the witness would not know what was in-
22 side of them. He may testify to what he felt.

23 THE COURT: Rephrase the question.

24 Q When you stood on top of the rugs were they
25 firm or did they move on anything?

1 wclk

2 A Well, they could fall down, could move either
3 way.

4 Q I am talking about where your feet are now.

5 A Well, if they were on the skids, yes, they were
6 solid; but when I fell, I went down with the rug and went
7 into the hole.

8 Q Once again, had you seen any holes in that wing
9 at all prior to the time you and the rug went down?

10 A No.

11 Q Had you or any other longshoreman done anything
12 with any of the skids in the wing of the hatch before this
13 accident occurred?

14 A No.

15 Q Would it be correct to say that at the time you
16 were hurt, any cargo was removed from the wings?

17 MR. KAIN: Objection.

18 THE COURT: Sustained.

19 Q What cargo had been removed from the wing of
20 the #6 hatch, upper 'tween deck, port side, prior to your
21 getting hurt?

22 A A couple of drafts of rugs.

23 Q Can you tell us how you feel at the present time?

24 A I feel very dizzy and very groggy, and I don't
25 feel well.

wclk

Ruffino - Cross

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1 Q Were you discharging from the upper 'tween deck,
2 the same deck level that you were in #6 on the day of your
3 accident?
4

5 A Yes.

6 Q How long did your gang work in #3 the day before
7 your accident?

8 A We were sent home a half a day.

9 Q Well, does that mean you worked in the morning
10 and then you were sent home?

11 A On account of rain, yes.

12 Q And you came back the next day and you were
13 assigned to a gang working in #6 hatch, is that correct?

14 A Yes, sir.

15 Q And I think you told us that you came on board
16 this ship sometime around 8:00 o'clock; is that right?

17 A I'd say around 8:15, like that.

18 Q What do you do, you check in on the pier with
19 the timekeeper? Is that what you do first?

20 A Well, they check all the men in first, yes.

21 Q At what time do they do that?

22 A They start around five minutes to eight, I
23 guess.

24 Q And after you were checked in with the time-
25 keeper, what did you do?

wcl

Ruffino - Cross

53

A They told me where to go, to #6 hatch.

Q And when you were checked in by the timekeeper, you did go to #6 hatch, did you?

A Well, you see, the extra men are put on the side, when all the steady men are called in first, then they pick from the extra men and they assign them to what gangs they need the men in.

Q What time did you get to #6 hatch?

A I believe around 8:15.

Q About 8:15. At the time you got there was the hatch already open?

A No.

Q Had the booms, the ship's cargo booms, been rigged at that time?

A They were rigging them at the time I got there.

A And that was the deck men in your gang that were rigging them; is that right?

A I believe so.

Q How long was it before they finished rigging?

A I'd say around 8:30.

Q About 8:30?

A About that.

Q And by 8:30 had the hatch been opened up?

A They were just opening it up, I guess, about that

1 wclk
2 time.

3 Q Now, when you went down into this hatch -- I
4 will withdraw the question.

5 How long did it take the crew to open this
6 hatch?

7 A A couple of minutes.

8 Q And when they got it opened, then it was some-
9 time around 8:30, 8:35, is that about right?

10 A Just about.

11 Q Then when you went down into this hatch, you
12 and any other hold men, what is the first things you did?

13 A First thing we did?

14 Q Yes, after the hatch was opened up. What did you
15 discharge first?

16 A Tea.

17 Q Didn't you take out dunnage, put it on the pier
18 or on deck?

19 A No.

20 Q You didn't discharge any dunnage that day?

21 A No.

22 Q When you started this discharge of the tea, the
23 hatch square was already opened, is that right?

24 A Excuse me, please?

25 Q I say when you started discharging, you and the

wclrk

Ruffino - Cross

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other hold men, this square of the hatch, this opening down into the hatch had already been opened up by the crew, hadn't it?

A Yes.

Q How far below the hatch coaming -- and you know what I mean by hatch coaming, don't you?

A Yes.

Q The rail around this opening, this steel rail around this opening?

A Yes.

Q How far below the level of that deck, in #6 hatch, was the top of the stow of the cargo?

A I can't offhand give you any dimensions on that.

Q Well, was it approximately even with the deck level or was it down several feet?

A No, it wasn't even with the coaming, the hatch, no.

Q Was it even with the deck that you were standing, that is, the weather deck of the ship?

A I really don't know.

Q Do you remember if the entire hatch square, that is, the part under this open -- not in the wings but on the square -- was the entire hatch square filled with cargo?

A No.

wcl k Ruffino - Cross

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Q Was there a portion of it that was clear all the way down to the deck?

A No. There was tea all over in different sections.

Q Is it your testimony that these skids of tea or some of these skids of tea were stowed on top of these carpets?

A No.

Q When you opened -- or when you started to work that morning, were there carpets -- I am talking now only about the square, not in the wings -- were these rolls of carpets stowed out in the square?

A There were a few rugs in the square, because I remember taking them out.

Q How many rugs, approximately, is a few?

A I'd say a draft or two.

Q And I think you told us there were five or six rugs to a draft, is that right?

A Yes.

Q Is it your testimony that there were only approximately two drafts of these rugs out in the square itself?

A I would say just about.

Q Just about. And what else was in the square?

wcl

Ruffino - Cross

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A Tea.

Q Was there anything else in the square but tea,
if you remember?

A Not that I recall.

Q That was underneath the rugs, is that correct,
stowed under the rugs, the tea?

A Stowed under the rugs?

Q Yes, were the rugs --

A The rugs were loose on top of the tea, and
some were on the floor too.

Q Down on the floor of the hatch?

A Yes.

Q Would you tell me how the rugs were stowed?

A The ones in the square or the ones in the wing?

Q Yes, the ones in the square. Let's start with
those.

A There were some rugs on the floor and some rugs
on top of the skids. They weren't stowed.

Q These rugs that you are talking about, are these
long cylinders? Is that what you are describing as rugs?

A Yes. One and about one half foot wide.

Q But they are cylindrical shape like a pipe?

A Round.

Q Round? And I think you said they were about

1 wclk
2 twelve feet long.

3 A I'd say between ten, twelve, like that. All
4 different sizes.

5 Q And the ones that you say were in the square
6 of the hatch, you said some were on top of skids of tea
7 and some were on the deck?

8 A Yes.

9 Q And when you say the deck, you mean the deck
10 of the 'tween deck, not the upper deck level, the weather
11 deck, the main deck. You mean down in the 'tween deck?

12 A Where the skids were laying, yes.

13 Q Where the skids were laying. Could you tell
14 me in which direction these rugs were stowed? Were they
15 stowed fore and aft, that is, along the axis of the ship
16 lengthwise, or were they stowed athwartships?

17 A The ones that were in the square?

18 Q Yes.

19 A They were actually, like, they were thrown in
20 the square.

21 Q Just thrown in the square?

22 A I would say, one was this way, one was this
23 way. I wouldn't say they were uniform down there.

24 Q Was there more than one tier? Do you know what
25 I mean by a tier?

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Ruffino - Cross

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1
2 A They weren't in tiers down there.

3 Q Just random rugs stowed around in the square
4 of the hatch?

5 A There were some on the skids, on top of skids,
6 and some on the floor.

7 Q And they weren't stowed in any particular
8 fashion, is that right?

9 A No, sir.

10 Q Was there any portion where they were built up
11 into a stow, that is, one tier above another tier?

12 A No.

13 Q How about out in the wings where you say you
14 were working when your accident happened? How many rugs
15 were stowed in the inshore wing where you were working?

16 A Quite a few.

17 Q Could you estimate for me how many is quite
18 a few?

19 A Offhand I couldn't say how many, no.

20 Q How about on the offshore wings, the side away
21 from where you were working? Were there any rugs stowed
22 in the offshore wing?

23 A No, not to my knowledge, no. I don't recall.

24 Q Incidentally, on the inshore wing, where were
25 these rugs stowed? Were they stowed along the entire length

1 wclk

2 of the hatch or where were they?

3 A Yes. They were stowed on top of tea that was
4 lined up on the inshore hatch.

5 Q When you say stowed on top, my question is:
6 Did they run all the way from the forward end of that hatch
7 to the aft end of that hatch in the wings?

8 A Yes.

9 Q And was there more than one tier of rugs on top
10 of the tea in the wings?

11 A Yes.

12 Q How many tiers would you say there were in the
13 wings on top of the tea?

14 Q I really didn't know. I really couldn't tell
15 you.

16 Q Well, was it more than one?

17 A Well, I don't know how many you mean in a tier.

18 Q I am asking you about the height. Do you know
19 what I mean by a tier, a roll of rugs, next tier another
20 roll of rugs, next tier another roll of rugs. That is what
21 I meant.

22 A Oh, these rugs were put on top of one another.
23 They weren't lined up uniform. They were built like a
24 pyramid down there, where we had to jump on top of them to
25 hand them down.

1 walk Ruffino - Cross

2 Q Let me see if I understand you now. You have
3 been a longshoreman for how long?

4 A 17 years.

5 Q And do you know what is meant by the expression
6 a Kent line stowage?

7 A No, sir.

8 Q Have you had occasion to work with pipe, either
9 loading it or discharging it while you have been a long-
10 shoreman?

11 A I think I did.

12 Q And when pipe is stowed more than one tier
13 high, you have these cylindrical pipes running across a
14 bottom tier, and then between two pipes you have another
15 one stowed, isn't that so?

16 A Yes.

17 Q Between the pipes on the first tier --

18 A Goes another pipe.

19 Q You go another pipe between two pipes going
20 down on the second tier?

21 A Yes.

22 Q Is that the way these rugs were stowed?

23 A No.

24 Q How were they stowed?

25 A They were just stowed, put on top of one another.

1 wclk

2 They weren't uniform up there at all. Because there was
3 nothing holding these rugs together.

4 Q These were round rugs, were they?

5 A Yes.

6 Q I think you told us they were in rolls?

7 A They were round, yes.

8 Q What, if you know, kept these rugs in a pile
9 or in a stowage one on top of the other when they were
10 round? Was there any shoring or fencing or anything that
11 kept them in this position?

12 A No.

13 Q Is it your testimony that these rugs were stowed
14 one on top of the other?

15 A I say in a bundle, like, just put on top of one
16 another.

17 Q Were they strapped together more than one roll?

18 A No.

19 Q About how long did it take you to discharge
20 these two or approximately two drafts of these rolls of
21 rug you say were in the hatch square?

22 A How long?

23 Q Yes. After you started.

24 A Well, first we took out the tea.

25 Q Did you take out the tea before you took out

1 wclk Ruffino - Cross

2 any rugs?

3 A Yes.

4 Q Do you have any distinct recollection that this
5 is the way it was done, or is that just what you are
6 guessing at?

7 A Well, I know the policy, that's the way they do
8 things.

9 Q I am asking you, as you sit there now, do
10 you have a clear recollection that that was the way this car-
11 go was discharged, first the tea before any of the rugs
12 were taken out?

13 A I believe so.

14 Q When the tea was taken out, I think you said
15 you used wire slings?

16 A With the tea, yes.

17 Q In discharging this tea?

18 A Yes.

19 Q This tea, when you said skids, do you mean it
20 was strapped on the pallets?

21 A Yes.

22 Q And were these wing-type pallets? Do you know
23 what I mean by a wing-type pallet?

24 A Yes.

25 Q They had an overhang, it is a platform with an

wclk Ruffino - Cross

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overhang from the bottom platform --

A Yes.

Q -- and the upper platform? Did you use spreader bars in under these wings to lift them out?

A No.

Q How did you take them out?

A With the wires.

Q Just put the wires in under the wings on the pallet?

A Yes.

Q In discharging these pallets of tea, which you say is the first cargo you took out, did you notice a space between pallets of tea as you discharged them from the hatch square?

A I don't understand that.

Q You told me just a minute ago that the first cargo you discharged from the square of that hatch -- when I say you, I mean your gang of longshoremen--was pallets of tea. Is that right?

A Skids.

Q All right, skids of tea. My question is: As you were discharging these skids of tea from the square of the hatch -- we are not talking about the wing now; from the square -- was there a space between these skids?

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Ruffino - Cross

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2 A There was only about, I'd say about eight or
3 nine skids of tea in the square of the hatch. So there
4 must have been a lot of space down there. There was only
5 nine skids.

6 Q Were these skids close together?

7 A No, they weren't, no.

8 Q There was a distance between the skids? I am
9 talking now about the square.

10 A Yes.

11 Q Was there a considerable distance, by that I
12 mean a foot or more, between these skids?

13 A Enough to get a body through.

14 Q And there were only eight or nine of these skids?

15 A That's all I believe there was.

16 Q Could you tell me how many skids you discharged
17 in a draft? I am talking now about skids of tea.

18 A One skid at a time.

19 Q One skid at a time. And about how long did it
20 take your gang on the day of your accident to discharge one
21 draft of cargo; in other words, from the time you hooked
22 on the draft of cargo, until you raise it up, burton it
23 across the deck, put it down on the pier, and had the
24 cargo hooked back and started on the next one.

25 A I really don't know.

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Ruffino - Cross

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1 Q Do you have any idea how many drafts an hour
3 your gang discharged?

4 A I really don't know. I didn't count them.

5 Q Could you tell me, before you started working
6 the wings, had you cleaned out any portion of the square
7 of the hatch, and I mean when I say cleaned out, I mean
8 all the way down to the hatch covers for the lower 'tween
9 deck. Had you taken any portion of the cargo out of the
10 square all the way down to the hatch cover, to the floor
11 of the 'tween deck?

12 A Everything was out.

13 Q That is all the cargo in the hatch?

14 A In the square.

15 Q Was the cargo in the square discharged complete-
16 ly from the square --

17 A Yes.

18 Q -- before you started in the wings?

19 A Yes.

20 Q There wasn't any cargo left for some other port?

21 A No. Not that I recall.

22 Q And what time did you finish -- when I say you,
23 I am again referring to your gang of longshoremen--what time
24 did you finish discharging the square of that hatch?

25 A I don't know, I'd say about 9:30.

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Ruffino - Cross

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Q And then what did you do, after you finished the square?

A We had to go up and discharge the rugs.

Q How high above the deck was the stow in the wings, the top of the stow?

A Above the 'tween deck?

Q Yes, from the floor of the 'tween deck.

A How high were the rugs?

Q How high was the stow of the --

A When you say stow, excuse me, are you talking about the cartons of tea?

Q Let me put it to you this way: After you finished discharging the square, if you stood in the square on the hatch board --

A Right.

Q -- in the square of the hatch, hatch boards for the square of the 'tween deck, how high, when you face toward the winches, how high was the very top of the cargo stow in the wings?

A It was way over my head. I'd say about seven feet, six-and-a-half, seven feet, and then inside was a little higher, under the --

Q Under the wings.

A The wings.

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Ruffino - Cross

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Q How tall are you, Mr. Ruffino?

A Five foot eight.

Q How tall?

A Five foot eight.

Q Five foot eight. When you got into the wings to discharge the stow, I think you said from the inshore wing, were you able to stand up on top of that stow?

A Yes.

Q So you were five feet eight --

A Inside the wing.

Q I am talking about inside the wing.

A Yes.

Q You were five foot eight yourself and you were standing upright on a stow about seven-and-a-half feet high?

A I would say about six-and-a-half, seven feet, yes, something like that. I was crouched over too. I wouldn't say I would be standing straight up. Because the rugs were stowed in a place where we had not all eight men could get up there. Just a few guys got up thereto work it. And I think I was still in a bent position when we got up there. I don't know if I was standing full straight up.

Q How much of a bent position were you in?

A Gee, I don't recall.

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Ruffino - Cross

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1 Q You weren't down on your knees and you weren't
2 flat on your stomach or --

3 A I bent down.

4 Q You crouched over when you got in, is that right?
5 How did you get up on top of this stow?

6 A We climbed up on the tea.

7 Q Was there some portion of the tea stowage that
8 was not covered by rugs at the time? In the wings, I am
9 talking about.

10 A No.

11 Q It was all covered by rugs?

12 A Well, the front part of the tea, I think it
13 was half rug, and we couldn't pull the tea out, because if
14 we pulled the tea out, the rugs would come down.

15 Q My question was, though: Was all of the stowage
16 of tea in the wings covered by these rolls of carpeting and
17 rugs that you were talking about?

18 A No, I wouldn't say all. No, I wouldn't say
19 that.

20 Q My question is, did you climb up from the floor
21 of the 'tween deck onto the skids of tea and then on to
22 the top of the stowed rugs?

23 A We went around to the back of it, because they
24 had small cases in the back, and we went from back of it.
25

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Ruffino - Cross

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2 Q When you say in the back of it, what are you
3 talking about?

4 A I am talking about inside the wing.

5 Q In the aft part of the hatch inside the wing?
6 Is that what you mean?

7 A Inside the wing behind the rugs. We could have
8 got up through there. We couldn't climb in the front, be-
9 cause the tea was so high, we couldn't get up there.

10 Q Well, didn't you tell me a minute ago that the
11 rolls of rugs went from the forward end of this inshore
12 wing all the way back to the aft end of the inshore wing?

13 A Yes, they laid right across, that's right.

14 Q And my question is: At what point did you climb
15 up to the top of the stow in the inshore wing?

16 A At what point?

17 Q Yes. At what point along? Was it in the forward
18 end of the hatch, the middle of the hatch, the aft end of
19 the hatch?

20 A The inshore side I climbed up.

21 Q What part of the inshore side? The forward
22 end of the inshore wing, the aft end, the middle of the
23 inshore wing?

24 A I believe it was the forward end.

25 Q The forward end. And in climbing up, how did you

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Ruffino - Cross

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do it?

A I climbed up there and I got on my -- I climbed up. I balanced myself and I got up where the rugs were.

Q And did you first get up on to the pallets or skids of tea or did you go climb directly on to the top of the rugs?

A We had to climb on the top of the rugs.

Q And how high above the floor of that hatch did you have to climb to get on top of the rugs? Ten feet, twelve feet, how high?

A Well, if I stood on -- if I balanced myself, I would say seven feet until I reached the top of the rugs.

Q Was there more than one tier of skids of tea in the inshore wing?

A Yes.

Q How many tiers were there of skids of tea?

A I would say a few tiers.

Q When you say a few --

A Across.

Q -- do you mean three?

A It would have been two, it could have been three.

MR. LASSOFF: He is using the word "across," Mr. Kain. I don't think he knows what you are talking about.

Q I am referring to the inshore wing only now.

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Ruffino - Cross

2 A Yes. Straight --

3 Q My question is: How many tiers? You told
4 me you know what a tier is, right?

5 A Yes.

6 Q That is one row of these, and then a second
7 tier would be stowed on top?

8 A No, no. I am talking about one tier on the
9 floor, another tier next to it on the floor. There is no
10 tier on top of one another down there.

11 Q That is my question. In the inshore wing there
12 was only one height of skids or one tier of skids.

13 A Yes.

14 Q And how high is a or was one of these skids,
15 approximately, of tea?

16 A I'd say about five-and-a-half, six feet.

17 Q Five-and-a-half, six feet high. Thank you.

18 How many drafts of these rolls of rugs did you
19 discharge before your accident?

20 A About two.

21 Q And in discharging these rolls of rugs, how did
22 the longshoremen in your gang do it?

23 A We got to hand them down into the square of the
24 hatch, hand the rugs down, because we couldn't use our
25 hooks to pull them down, because we would have damaged the

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Ruffino - Cross

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goods. So we had to hand them down, with one fellow on one side, another fellow on the other side. And they make up these drafts in the square of the hatch. They put the slings in the square, the rugs come down, two fellows pick it up and put them in the slings.

Q Are these rolls of carpeting or rugs, you say, are about a foot in diameter? Is that about what they were?

A In diameter?

A Yes.

Q I would say so.

Q And do you have any idea what they weighed?

A No, sir.

Q Did you have occasion to pick one up sometime during this discharge before your accident?

A Pick up a rug?

Q Yes.

A I wouldn't be able to.

Q Did you assist in picking one up?

A Yes.

Q Are they heavy?

A Some were heavy, some were light.

Q I think you said they put them into slings.
What type of slings did they put them in?

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Ruffino - Cross

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1 wcl
2 A A rope sling.

3 Q Were these countinuous rope slings, just a big
4 circle of rope?

5 A No. It has an eye at the end of it.

6 Q A piece of rope with an eye at both ends? Is
7 that what they were?

8 A I believe so.

9 Q And did they, in putting these on the rugs,
10 did they put one eye through the other eye, so that it
11 formed a noose after the rugs were out on it?

12 A Yes, sir.

13 Q And then what did they do? Take them with the
14 cargo hook?

15 A Yes, sir.

16 Q In discharging these rugs, how were the slings
17 positioned on the draft of these rugs? I think you said
18 this draft was five or six rugs to a draft, or sling.

19 A I don't know, sometimes they could use two
20 slings and sometimes they would use one sling.

21 Q Were these slings affixed to -- when they used
22 two, for example, did you put one on either end of the
23 rolls or did you put both sling in the middle?

24 A They would put them more towards the middle
25 than the end.

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Ruffino - Cross

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1 Q At the time of your accident what were you
2
3 actually doing? Were you working?

4 A At the time of my accident?

5 Q Yes.

6 A Yes, sir.

7 Q You were working?

8 A Was I working?

9 Q Yes. What were you actually doing at the
10 exact time your accident happened? Were you just standing
11 or were you doing some work?

12 A I was discharging rugs.

13 Q And in discharging the rugs at the time of your
14 accident, what were you physically doing at that time?

15 A I was about to pick up a rug. I was trying to
16 position myself after throwing it into the square.

17 Q Were you being assisted in picking up this rug
18 at that time?

19 A Yes.

20 Q And who was assisting you?

21 A Mr. Green.

22 Q Anybody else, or was it just you and Mr. Green?

23 A Well, I didn't know what the other fellows were
24 doing. They were doing their own. They were knocking down --

25 Q I am talking about the rug that you and Mr.

1 wclk

2 Green at least were working on.

3 A Just me and Mr. Green.

4 Q Just you and Mr. Green?

5 A Yes.

6 Q Now, in order to pick this rug up, were you
7 going to physically lift it --

8 A No.

9 Q -- to pass it down into the square of the
10 hatch? What were you and Mr. Green doing?

11 A Pushing it.

12 Q Pushing it. Out into the square, is that what
13 you meant to do?

14 A Well, we were pushing it towards the edge of
15 the skids that were there, and there was two more men
16 down below that would bring it down.

17 Q Were you pushing it with the end out or were
18 you rolling it with the round portion first?

19 A I was on one end and he was on the other.

20 Q Well, were you rolling it out or were you pushing
21 the cylinder out ahead of you?

22 A No, we were actually pick an end up apiece and
23 just pushing it out.

24 Q You didn't attempt to roll it out, is that right?

25 A No.

wclrk Ruffino - Cross

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Q Now, while you were doing this, how far away from you was Mr. Green?

A Mr. Green was at the other end.

Q Other end of the roll?

A I believe so.

Q And what were you standing on?

A On the rugs.

Q Could you tell me how high was the stow of rugs that you were standing on?

A I really couldn't tell you.

Q Was there more than one height of rugs under where you were standing?

A Yes. Wait, let me think. Well, they were all different-sized rugs, you know? If you have a ten-foot rug and you have a twelve-foot rug and an eight-foot rug, you know, you just can't balance it off.

Q Well, my question is, though, where were your feet placed? Were you standing on top of the roll of rugs --

A Yes.

Q -- when you were doing this?

A Yes.

Q Were your both feet actually on top of the roll, or did you have one foot between that roll and the next one, in other words, in the line between them.

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Ruffino - Cross

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Q I had one foot on and one foot off.

3

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Q But both of your feet were actually on rugs at the time, is that right?

5

6

A I said I had one foot on and one foot off. I was balancing myself at the time.

7

8

Q You were balancing yourself with one foot -- when you say one foot off; what was that foot on, if anything?

9

10

A It could have been a case or something.

11

12

Q It could have been a case?

11

12

A Well, a skid, tea.

13

14

Q Let me see if I understand you. You had one foot on a skid of tea --

15

16

A Yes.

17

18

19

20

Q -- and you had the other one on a rug?

A Yes.

Q And from this position, one on the skid of tea and the other on a rug, you were attempting to push a rug out into the square, being assisted by Mr. Green. Is that right?

21

22

23

24

A Yes. We were getting into position, right.

Q And as you did, what happened?

A I backed up, and my left foot was on the rug that sank into a hole.

25

Q That is your left foot?

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Ruffino - Cross

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A Yes, sir.

Q Did you back up using both feet? In other words, did you walk backwards so that your foot that was on the skid you backed up on that too?

A It happened so fast. I believe I moved both feet back a little bit, yes.

Q And at this point you say the rug on which your left foot was resting went into a hole, is that right?

A No. When I backed up, my foot went into the hole. Where it was resting it was all right. But when I had to back up because the roll was longer than I thought it was, I had to back up and position myself to grab it. And when I did that, I stepped on a rug that went in this hole.

Q And that was a different rug then you had been stepping on or resting your foot on before you backed up?

A Yes.

Q What happened then?

A I went into this hole, my foot went down, I lost my balance, and I fell backwards.

Q When you fell backwards, in which direction did you fall?

A To my left.

Q To your left. And at the time you fell to your

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Ruffino - Cross

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1 left, in which direction were you facing?

2 A I was facing forward.

3 Q When you say forward, do you mean out into the
4 square of the hatch --

5 A No.

6 Q -- or towards the front end of the hatch?

7 A Towards my partner, towards the end.

8 Q And you fell to your left?

9 A Yes, sir.

10 Q What did you fall on?

11 A Steel.

12 Q Steel what?

13 A The deck of the ship. The upper 'tween deck
14 there.

15 Q Are you indicating that you fell sideways into
16 a space between the stow which you say was in the wings
17 and the side of the ship?

18 A Yes.

19 Q How big was the space between this stowage and
20 the side of the ship?

21 A There was quite a bit of space there.

22 Q Was it two or three feet?

23 A You mean two or three feet wide?

24 Q Yes.

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Ruffino - Cross

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2 A It could have been three feet, four feet.

3 Q The distance between the skids and the stowage
4 of tea and the rugs and the side of the ship, was that two
5 or three feet?

6 MR. LASSOFF: He said three or four feet, Mr.
7 Kain.

8 Q Three or four feet. Was there anything that
9 you noticed that shored or fenced off this stowage in the
10 wing from the side of the ship?

11 A I didn't see anything fenced off.

12 Q There was just an empty space between the stow --

13 A Not empty space. There was cargo there. There
14 was cases in the wing.

15 Q I am talking from the stow in which you were
16 standing to the side of the ship. I understood you to say
17 there was three or four feet of space there. Is that
18 correct?

19 A Yes.

20 Q My question is, was there any type of shoring
21 or any type of fence --

22 A No, I didn't notice.

23 Q -- between this stow on which you say you fell
24 from, and the side of the ship?

25 A I don't recall that, no.

1 wcll
2 Q After you fell from the stow, what is the next
3 thing you remember?

4 A I remember sitting on a cargo talking to Green
5 and a couple of other fellows in the hatch.

6 Q Do you remember getting out of this space into
7 which you fell?

8 A I don't remember that.

9 Q You don't know how you got out from the space.
10 The first you recall you were sitting on carton, is that
11 right?

12 A I know Mr. Green helped me, that's all.

13 Q That is because Mr. Green told you they helped
14 you, is that how you know?

15 A Yes.

16 Q Do you have any personal recollection of Mr.
17 Green assisting you from the space between the stow and
18 the side of the ship?

19 A Do I have any what?

20 Q Any personal recollection. Do you remember Mr.
21 Green assisting you out of this hole into which you say
22 you fell?

23 A No, I don't remember.

24 Q How long was it after your accident that you
25 left the ship?

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Ruffino - Cross

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2 A About fifteen minutes.

3 Q And during this fifteen-minute period what did
4 you do besides sit on this box or carton?

5 A That's all.

6 Q Did you get any first-aid treatment or any medi-
7 cal treatment of any kind during this period?

8 A Down the hold? No.

9 Q While you were working in the hold that morning,
10 were there any ship's officers down there?

11 A No.

12 Q Were there any ship's crew down there?

13 A No.

14 Q When you left this hold that morning, how did
15 you leave?

16 A Mr. Green had to assist me up the ladder. He
17 was behind me, make sure I didn't fall.

18 Q Was this a regular hatch ladder, a vertical
19 ladder in the hatch square?

20 A No. I went up through a--

21 Q An escape hatch?

22 A I believe it was.

23 Q Was this like a stairway with rails on either
24 side or was it a straight vertical steel ladder?

25 A I don't remember.

1 wclk

2 Q When you got up out of the hatch what did you
3 do then?

4 A Mr. Green walked me to the timekeeper's
5 office.

6 Q And the timekeeper's office was located where?

7 A On the pier.

8 Q . Green go with you to the timekeeper's
9 office?

10 A Yes.

11 Q What happened when you got to the timekeeper's
12 office?

13 A I told him that I had had an accident on the
14 pier.

15 Q Did he ask you how it happened?

16 A Yes.

17 Q Did you tell him?

18 A Yes.

19 Q Did you fill out any report or did he fill out
20 any report while you were present?

21 A I don't recall.

22 Q Did you get any treatment while you were at
23 the timekeeper's office?

24 A I don't recall that either.

25 Q Incidentally, before you left the ship, did you

wcl

Ruffino - Cross

86

report the happening of this accident to anybody?

A The hatch boss was down.

Q Did you report it to any of the ship's mates?

A No.

Q And the hatch boss was in the hatch when your accident happened, is that right?

A I believe he was either on deck or in the hatch. I really don't remember.

Q When you got to the timekeeper's office, did he refer you to a specific doctor?

A No. He told me I had a choice of doctors to go to, I believe. Something like that.

Q And you selected Dr. Guarino?

A Yes.

Q Had you been treated by Dr. Guarino before?

A I don't remember. I don't think so. I don't remember.

Q Now, after you started going to Dr. Guarino, other than these physiotherapy treatments that you say you got, I think you said, three times a week, did you get any other treatment?

A No. He gave me whirlpool and heating.

Q Have you been treated for these injuries by any other doctor? I am not talking about examinations now,

Green - Direct
Ruffino - Redirect/Recross

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wcl k

Expressway.

MR. LASSOFF: No further questions.

THE COURT: Anything further? Next witness.

MR. KAIN: Just one or two.

REXCROSS-EXAMINATION

BY MR. KAIN:

Q Was this to a doctor's office or to a hospital?

A This was to a urine specialist out in Flatbush.

Q That is a doctor's office?

A Well, where they do urine tests, yes.

MR. KAIN: No further questions.

THE COURT: Next witness.

(Witness excused.)

MR. LASSOFF: Mr. Green.

J O S E P H G R E E N, called as a witness on
behalf of the plaintiff, being first duly sworn,
testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. LASSOFF:

Q Mr. Green, were you a witness to an accident
that occurred to Peter Ruffino --MR. KAIN: If your Honor please, I object to
leading this witness.

wcl k

Green - Direct

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2 THE COURT: All right.

3 Where were you on January 29, 1974, at about
4 9:30 in the morning?

5 THE WITNESS: I was on the job, sir.

6 THE COURT: You were where?

7 THE WITNESS: On the job working.

8 THE COURT: What ship were you working?

9 THE WITNESS: On the JALAJYOTI at pier 12.

10 THE COURT: What were you doing?

11 THE WITNESS: Discharging bales, different tea
12 cargo and bales of rugs.

13 THE COURT: Who was with you at the time?

14 THE WITNESS: Well, eight men was in the hold,
15 as they usually used eight men. And this gentleman over
16 there, he was with us.

17 THE COURT: All right. Proceed.

18 BY MR. LASSOFF:

19 Q Now, Mr. Green, what hatch were you working in
20 that day?

21 A #6.

22 Q What deck level?

23 A The deck.

24 Q Is that the upper 'tween deck?

25 A Yes.

wcl

Green - Direct

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THE COURT: Were you loading or discharging?

THE WITNESS: Discharging.

THE COURT: Was that the first day that you worked in that hatch?

THE WITNESS: Yes.

THE COURT: Was this your regular gang?

THE WITNESS: Yes, that's my steady gang.

THE COURT: Was Mr. Ruffino a stranger to your gang?

THE WITNESS: Yes, he was an extra man that was hired.

BY MR. LASSOFF:

Q What time did you start working in the upper 'tween deck of hatch #6?

A Well, usually checked in by 8:00 o'clock, and by 8:15 we were in working.

Q When you first went into the #6 'tween deck was there any cargo in the square?

A Yes, we had to discharge some teas, and rugs was in there, we had to take it out.

Q Did there come a time when you had to work in the wings?

A Yes.

Q About what time were you finished discharging

1 wclk

Green - Direct

110

2 the square?

3 A That was about 9:30, and they give us orders to
4 take out what bales were there because the truck was outside
5 waiting for them.

6 Q Will you speak a little louder?

7 A We were finishing the square at 9:30.

8 THE COURT: We have a little difficulty with
9 your accent -- that is all right, don't feel embarrassed
10 about it -- but we have a little difficulty with it, it is
11 hard to hear you, so speak a little slower.

12 A We finish in the square at 9:30.

13 Q All right, stop. When you finished working
14 in the square, did you then have to work in the wing?

15 A Yes.

16 Q Which wing?

17 A On the inshore side.

18 Q Inshore side?

19 A Yes.

20 Q Would that be the left side of the ship as you
21 face the front of the ship?

22 A Yes.

23 Q What cargo was there in that wing?

24 A Well, we have teas and we have bales on top of
25 the teas.

wcl

Green - Direct

111

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Q When you say bales, what were in the bales?

3

A Rugs.

4

Q Rugs?

5

A Yes.

6

Q Okay.

7

A Rolls of rugs.

8

Q In the wing how high was the stow of tea?

9

A About five feet, six feet.

10

Q Was the tea on skids?

11

A Yes, it was on skids.

12

Q And was the stow one tier across, one skid

13

across all the way across the wing?

14

A Yes. And a lot of loose tea on the other side.

15

Q What was on top of the tea?

16

A Bales.

17

Q For our purpose can we call them rugs?

18

A Yes, that's right.

19

Q How were the rugs stowed on top of the skids of

20

tea?

21

A Well, they laid them across. They wasn't

22

strapped up or nothing.

23

Q Were the rugs stowed fore and aft or port?

24

A They were all loose.

25

Q Were they stowed on top of each other?

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Green - Direct

112

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A Yes.

Q In other words to discharge that cargo what did you men have to do?

A We had to go on top and take them down.

Q On top of what?

A The teas.

Q In order to discharge the rugs did you have to work on top of the rugs?

A Yes, we have to, yes.

Q Now, did you see an accident occur to Peter Ruffino?

A Yes. We both --

Q Wait. Just yes or no, please.

A Yes, I did.

Q Tell us what you saw.

A Well, we was on top to take the bales down to give to the men below, to try to discharge out.

THE COURT: Would you repeat that?

THE WITNESS: While we were discharging, the both of us went on top of the case of teas, then, to discharge them. The rugs we had to take them down for the men below to get them to send them up.

Q Had to take what down?

A The rolls.

wclk

Green - Direct

113

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Q The rugs?

3

A Yes.

4

Q What did you see happen?

5

A I saw when he went down.

6

Q How did he go down?

7

A Well, he stepped on the end of the rugs and

8

then he went down on the side.

9

Q Did anything happen to the rug when he stepped
on the end of it?

11

A Yes, because it was all loose there and the
end of it went downward, the end that he stepped in.

12

13

Q Went down into what?

14

A The hole.

15

Q Before this accident occurred had you seen any
holes in the stow?

16

17

A No, no, you could never see anything on top.

18

Q When he went down, which way did he fall?

19

A He fell on the side.

20

Q Which side?

21

A On the outside, on the inshore.

22

Q He fell inshore.

23

A Yes.

24

Q That would be to his left?

25

A Yes.

wcl k

Green - Direct

114

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Q How far did he fall?

3

A The height of the tea. That was about six

4

feet.

5

Q What did you see when you saw him fall?

6

A When I see him fall down, I came down off the

7

cases and I helped him out; I stand him up.

8

Q Were you standing on the rug at the time or the

9

case?

10

A When he fell down?

11

Q Yes.

12

A No, he fell between the two cases.

13

Q I am talking about you.

14

A I was on top of the case, on the rug.

15

Q Were you standing on the rug or on the case?

16

A I was standing on the rug.

17

Q On what?

18

A On the case.

19

Q Now, there are rugs on top of the cases?

20

A Yes.

21

Q Were you standing on the cases or on top of

22

the rugs on the cases?

23

A I was standing on the rug that lie on the case.

24

Q All right, fine. Now, what did you see when

25

you went to the place where he fell?

wclk

Green - Direct

115

1 A I saw him down there and I pick him up and I
2 shake him up and I say, "Are you all right," and like he
3 was into another world. And I shook him, and I sit him
4 up.
5

6 Q When you say, "Like he was into another world,"
7 do you mean that he was unconscious?

8 A Yes, yes.

9 Q Can you tell us approximately how long he was
10 unconscious?

11 A Well, about five, ten -- five or ten minutes.

12 Q And how did you get him out of this hole?

13 A Well, it was between two cases, some tea, loose
14 cases of tea were in that. I grabbed him up and I sit him
15 up and trying to get him together. And when he came to, I
16 said, "Are you all right?" And he shook his head like
17 this, and I call the rest of the men and I say, "Come over
18 here, this guy hurt."

19 Q What did he do after that, or what did you do
20 after that, either?

21 A I advise him to go upstairs.

22 Q How did he go upstairs?

23 A He went up the ladder.

24 Q Did you go with him?

25 A Yes, I went with him to the office.

1 wclk

Green - Direct/Cross

116

2 Q And did you go with him to the timekeeper's
3 office?

4 A Yes.

5 Q Incidentally, did you know Mr. Ruffino before
6 this accident?

7 A No, I seen him like so many steady men on the
8 pier.

9 Q Had you ever seen Mr. Ruffino since this acci-
10 dent prior to yesterday?

11 A No, yesterday was the second time I seen him.

12 Q Incidentally, you do know me, do you not?

13 A Yes, I know you.

14 Q I represent you, do I not?

15 A Yes.

16 MR. LASSOFF: No further questions, your Honor.

17 CROSS-EXAMINATION

18 BY MR. KAIN:

19 Q Mr. Green --

20 A Sir?

21 Q -- how many times have you been represented by
22 Mr. Lassoff or his office, Zimmerman and Zimmerman?

23 A First time. First time.

24 MR. LASSOFF: I don't think he understands your
25 question, Mr. Kain.

wcl

Green - Cross

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THE COURT: Please. Don't make me -- gentlemen, you understand that if I have to do something about it, I will now. I want no comments.

Q Did you consult Mr. Lassoff in connection with a case that you have?

A Oh, definitely.

Q Was it just one case or have you consulted him more than once?

A I have two cases that he is taking care of for me.

Q Two, is that correct?

A That's right.

Q Now, let's come back to the day of this accident, January 29, 1974. You say you started to work sometime around 8:15, is that right?

A Definitely.

Q When you got up on the ship, did you go directly back to #6 hatch?

A Yes. I was ordered to go to #6.

Q And when you got back to #6 hatch, had the deck men in your gang rigged the hatch?

A They was rigging.

Q They were rigging at that time. Was the hatch square open?

wcl k

Green - Cross

118

A Well, those hatch covers are just an automatic door that open like this (snapping fingers).

Q And that is done by the ship's crew, is it?

A Yes.

Q When you got back there, were these automatic covers opened?

A Yes.

Q When you got back there, were these automatic covers opened?

A All open, yes.

Q Could you tell me how much cargo was in the square of that hatch?

A A fair amount of cargo, teas and rugs.

Q Was it loaded completely with cargo?

A Not all the way to the top.

Q About how far below the top would you say the top of the stow and the square was?

A About halfway.

Q About halfway?

A Yes.

Q And what was on top of the stow in the square?

A We have rugs and strapped up the teas that were there.

Q First let me ask you: Was the entire square

wclk

Green - Cross

119

covered with cargo up to about halfway?

A Yes.

Q And this cargo was rugs and tea?

A Yes.

Q Was the rugs -- I am only talking now about the square -- was the rugs, the stow rugs on top of the tea in the square?

A Yes.

Q Could you tell me about how many rugs there were in the square?

A Well, at the moment I definitely don't remember the amount of rugs that was in the square, but we have discharged lots of rugs out of the ship.

Q Was it a great many?

A Yes, we discharge a lot out of the square.

Q I am talking just about the square. Were there a great many rugs in the square?

A A fair amount of them that were in the square that we have to discharge first.

Q And these rugs, were they all pipe shape, cylindrical in shape?

A Lengths. Long lengths.

Q Were they all round?

A Yes, they were all round and long lengths.

wclk Green - Cross

120

Eight to ten feet long.

Q Maybe twelve feet long?

A Well, definitely long. I don't remember the length of them now.

Q And these lengths of rugs, were they all stowed on top of chests of tea?

A Yes. Because all tea was below and the rugs was on top.

Q That is in the square.

A In the square.

Q Now, before you started to work that morning, before you started to discharge anything, you discharged a quantity of dunnage, didn't you?

A From the ship?

Q From #6 hatch.

A No, that ship doesn't carry dunnage.

Q You didn't discharge it?

A No, not dunnage.

Q What did you start discharging when you first began to discharge?

A Rugs.

Q And could you tell me, these rugs that were in the square of the hatch, was there more than one tier of rugs in the square?

1 wclk

Green - Cross

121

2 A Yes, they were all piled up on top of each
3 other.

4 Q And how high were they piled, if you know?

5 A On top of the tea. The tea is roughly six
6 feet high.

7 Q No, I am just talking about the rugs. Were
8 there three tiers of rugs, four tiers?

9 A Yes, roughly about that.

10 Q About three?

11 A Roughly about that.

12 Q And did this go all the way across the hatch?

13 A Right in the wing.

14 Q And did it cover the entire top of the stow?

15 A Yes. Of the tea.

16 Q But that is in the forward part of the hatch
17 square and the aft part of the hatch square, the entire
18 square was covered with chests of tea --

19 A And rugs.

20 Q -- and rugs on top of the chests of tea
21 throughout the complete square, is that right?

22 A Yes.

23 Q Before you started work in the wings, did you
24 clean all the cargo out of the square?

25 A All the rugs from the square. That is what they

wclk Green - Cross

122

wanted to come out first.

Q Just the rugs.

A First.

Q You left the cartons of tea. After you had taken out the rugs, about what time was it that you finished that?

A Roughly in the morning that we discharged -- we did finish before 12:00 o'clock, all that was in the wing, we finished before, something before.

Q I am talking now just about the square for the moment.

A Oh, the square? Finished around 9:30, what rugs were in the square.

Q You took out all the rugs --

A From the square.

Q -- from the square of the hatch.

A Yes.

Q And that was about three tiers of rugs that covered the entire square? Now, in discharging these rugs, when you first started, what did you use to discharge them?

A Sling.

Q Rope sling or wire sling?

A Rope sling.

Q And how many slings did you use on each one of these drafts?

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Green - Cross

123

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A Two.

Q Do you remember about how many of these rolls or bales of rugs that you put in each draft?

A I don't remember now the amount that goes into each rug.

Q And it be more than one?

A Oh, yes, definitely more than one.

Q Would it be four or five?

A Depends on the length of the sling. Because, you know, the foreman was there and the chief mate was there, to tell us the amount to put in the sling, because they were afraid of anything to get damaged.

Q When you were discharging these rugs, about how many drafts of rugs would you say your gang discharged in an hour?

A Well, I wouldn't know how many they discharged in an hour. I have no recollection of that now.

Q Would it be more than ten?

A In an hour?

Q Yes.

A Got to be more than that.

Q It would have to be more than that?

A Yes.

Q How about twenty? Would it be more than twenty?

wcl

Green - Cross

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1 wcl
2 A Roughly I wouldn't say the amount. No, I
3 wouldn't quite remember the amount that they discharged in
4 an hour.

5 Q Is this the only occasion in which -- I with-
6 draw the question.

7 How long have you been a longshoreman, Mr.
8 Green?

9 A Since I am 13 years old.

10 Q Is that the only type of work you have done in
11 the last 13 years?

12 A That's right.

13 Q And before the day of this accident, January 29,
14 1974, had you had occasion to discharge this type of rug or
15 carpeting before?

16 A Oh, yes.

17 Q And on the occasions when you did it before,
18 did you average about 20 drafts an hour?

19 A Depends on how you going to reach in to get
20 them out. Sometimes they are in the wings. Sometimes they
21 are in between different cargos.

22 Q These ones that you were discharging in the
23 square, those you didn't have to reach in the wings for,
24 did you?

25 A The ones in the square?

wclk

Green - Cross

125

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3 Q Yes.

4 A No, they are right in the square.

5 Q And all you had to do was lift them up and
6 put the slings on them, is that right?

7 A Roll them over to the sling.

8 Q And hook the slings on with a cargo hook and
9 up and out?

10 A That's right. And they have to be very care-
11 ful, because there is no hook allowed to use in there, and
12 some day I have to take at least four men, depending on
13 the size and the weight.

14 Q Were these ropes fairly stiff when you put the
15 slings on them?

16 A No, because they are not hold them together.
17 They are just rolled in rough, and the length, the length
18 of they, they are all bent up.

19 Q Where did you put the slings on it?

20 A Maybe in the center of it.

21 Q In the center?

22 A Yes.

23 Q And you put the slings around four or five of
24 these rolls at a time?

25 A Roughly.

Q You finished this at about, I think you said

wcl:k

Green - Cross

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all the rugs were out sometime around 9:30 in the square?

A What was in the square.

Q Well, I am only talking about the square for the moment. Those were all out by about 9:30. And when the rugs were all out, what remained in the square?

A Tea.

Q And were these cartons of tea strapped on to pallets?

A Palletized there.

Q Was it all palletized?

A Yes.

Q Was the entire square covered with pallets of tea?

A No. There are loose ones. Not all was strapped up. Not all the tea was strapped up.

Q It wasn't all strapped?

A No.

Q Some of it was loose?

A Yes, sir.

Q Was there tea covering the entire square or was there some portion of the square that was empty where you could see the 'tween deck itself?

A No, they were loose, you could see some of the bales went between some of the teas there, the way they load

1 wclk
2 them. There is no strap to hold them. They come in like
3 that. Some are thrown down between the cases. You have
4 to go in and take them out to have them discharged.

5 Q My question was: When you had all the rugs
6 out --

7 A Of the square.

8 Q -- of the square, was there the entire square
9 itself, was that all covered with tea?

10 A Yes.

11 Q And did you take out any of this tea from the
12 square?

13 A Yes. Also discharge some.

14 Q Did you do that before you went in to get cargo
15 in the wings?

16 A Yes, we have to discharge some to get some
17 of the -- we have to climb over to get it.

18 Q I didn't hear you.

19 A We have to get the tea from the square. The
20 palletized ones we had to get from the square.

21 Q You took the palletized tea out of the square?

22 A Yes.

23 Q How about the unpalletized tea, did you take
24 those out?

25 A No, we have to get those inside the wing, but

1 wclk Green - Cross 128

2 they were higher than the loose ones then.

3 Q I didn't hear your last answer. Could you speak
4 a little slower?

5 A We had to discharge those in the front, in
6 the square, that was palletized, those were palletized, so
7 as to help us to get inside the wing. That is the only
8 way we could get inside the wing, to take out the palletized
9 tea.

10 Q Is it your testimony that you could not get
11 into the wing from the square because the pallets blocked
12 your access into the wing?

13 A Definitely. Those high pallets, you have to get
14 those out of the square first.

15 Q There was no space between the pallets and the
16 inside of the hatch square?

17 A No, not that I recollect.

18 Q So that if I understand you correctly, then,
19 you took out the palletized tea, so that you could get into
20 the inshore wing, is that right?

21 A Yes, sir.

22 Q Now, this palletized tea that you took out,
23 what portion of the hatch was that stowed in?

24 A In the square.

25 Q In the forward part of the square, the after

wcl

Green - Cross

129

part of the square, the middle of the square, what was it?

A The whole entire hatch was tea, palletized and loose tea. That is what came, rugs and tea.

Q No, my question is, you told me before, if I understood you correctly, that you took -- when I say you, I mean the men in your gang -- you discharged the palletized tea after you discharged the rugs or the carpets from the square of the hatch. Is that right?

A That's right.

Q I understood you to say that after you finished discharging the palletized tea that you then went into the inshore wing to discharge cargo. Is that right?

A Yes. Palletized tea in the square, we went into the wing to get those that were inside the wing.

Q But you didn't, if I understood you correctly, discharge any unpalletized tea before that time?

A No.

Q Is that right? Now, when you finished the unpalletized -- I am sorry -- the palletized tea, when you finished discharging that, about what time was that?

A What was in the square?

Q Yes.

A 9:30, roughly 9:30.

Q You took all the rugs from the square plus the

1 wclk

Green - Cross

130

2 palletized tea out by 9:30?

3 A Yes.

4 Q Do you have any idea of how many drafts, all
5 told, you discharged from that hatch from the time you
6 started to work until 9:30? Can you approximate that
7 for me?

8 A I don't remember the amount that was discharged
9 now.

10 Q When you went into the inshore wing, was there
11 still cargo in the aft part of the hatch square, the back
12 part of the hatch square?

13 A Yes, but not rugs. Yes, there was cargo.

14 Q There was cargo there?

15 A Yes.

16 Q But there was none in the forward end of the
17 hatch square? Is that what you say?

18 A I don't remember that exactly, but I remember
19 where we were working we were working inshore, there was
20 again men that were in there, some were offshore and some
21 were inshore. But we had to discharge all the rugs first.
22 So the men from the offshore had to come over and we all
23 worked together, so as to get the rugs off first.

24 Q I would like you to tell me if you remember or
25 if you can, at the time you started into the wings was the

wclk

Green - Cross

131

forward part of the hatch square in #6 upper 'tween deck
completely cleared of all cargo?

A I do not remember now.

Q Do you have any recollection of working on top
of any cargo?

A On the inshore?

Q In the hatch square.

A In the square?

Q No, when you worked inshore were you working on
top of the cargo in the hatch?

A Oh, yes. That is the only way you could get to
the rugs.

Q These rugs on the inshore side, were they stowed
on top of tea, chests of tea?

A Yes.

Q And how high was the tea on the inshore wing?
Was it just one tier or more than one tier?

A Lots of tea, lots of teas. That is all that came
in the ship. Teas and rugs.

Q Was it more than one pallet high?

A Yes.

Q How many tiers of pallets were there on the
inshore wing?

A I don't remember the amount that was in there now.

1 wclk

Green - Cross

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2 Q But in any event it was more than one, is that
3 right?

4 A Yes.

5 Q How high was a pallet of tea of the type that
6 you were discharging?

7 A Five or six feet.

8 Q Five or six feet high? About how wide was it?

9 A On each pallet I think is -- each case was
10 roughly about three feet six or three feet. And each --
11 I don't remember how it was strapped now.

12 Q Were these cardboard boxes that were strapped
13 on the pallets?

14 A No, wood.

15 Q Wooden boxes?

16 A Yes.

17 Q The tea?

18 A Yes.

19 Q Were they strapped onto the pallet?

20 A Yes.

21 Q And do you recall what type of pallets these
22 were? Were these the standard four by six pallet?

23 A I think so.

24 Q Did they have wings on the pallet? Do you
25 know what I mean by wings?

wclk Green - Cross

133

2 A No, no wings there.

3 Q Is there an expression you are familiar with as
4 a longshoreman called a warehouse pallet?

5 A Yes.

6 Q Were these warehouse pallets?

7 A No.

8 Q They were the standard stevedoring pallet. But
9 they didn't have wings. What did you use, plugs?

10 A We have to use wire to discharge the tea and
11 the palletized.

12 Q That is what I am trying to find out. What
13 kind of pallets did this tea come on? Did you use plugs to
14 discharge these pallets?

15 A No, no plugs.

16 Q Or did you use wire?

17 A No plugs. Wires.

18 Q Do you know what I mean by the wings on a
19 pallet?

20 A Yes, I know what it is, that you putting some-
21 thing (demonstrating).

22 Q You didn't have spreader bars to put underneath?

23 A No, no, not when they are palletized.

24 Q Just put the wire in under the wings, was it?

25 A Inside the holes. You have to string the wire

wclk Green - Cross

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inside.

Q Inside of what?

A There are holes in the pallet and you have to put the wires through that.

Q You run the wire through it?

A That's right. There is no way to hook it up on the side.

Q Because of the wings on it, is that right?

MR. LASSOFF: He said there are no wings.

A There's no wings on the pallet.

Q Now, this tea that you and -- I am sorry. I will withdraw the question.

On the inshore side you had more than one tier of these pallets, and on top of this you had rugs?

A Yes.

Q And how were the rugs stowed on top of the pallets?

A They just laid them down. They were all laid on there, no straps up, nothing.

Q Are these round rolls, these rolls of carpeting?

A Yes, round rolls, right.

Q Have you seen pipe stowages aboard ship?

A Yes, I have seen pipe.

Q Where you have a row of pipes and then between

wclk Green - Cross

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two pipes you put another one?

A No, not that way.

Q It was not that type?

A No, none at all.

Q How was it stowed; one on top of the other?

A Yes, just on top of each other.

Q Just one on top of each other, is that right?

A Yes, just thrown like that (indicating).

Q Were they stowed uniformly?

A No.

Q Or just scattered around?

A No, just like that. Generally, ship that comes from the other side, the cargo doesn't stow like we stow over here. They just put it like that. And you have to roll it up.

Q They weren't stowed in the uniform stowage?

A No.

Q And they weren't secured in any way?

A No way at all.

Q How high above the floor of the 'tween deck, the portion where you took all the cargo out, was the top of this stow that you and Mr. Ruffino were working on?

A From the bottom of the palletized to the top where the rugs lie, those tea are roughly six feet high,

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and on top of that tea the rugs are then piled on top of it.

Q Well, I understood you to say that there were two tiers.

MR. LASSOFF: Your Honor, I don't like to object, but there is obviously misunderstanding between these two gentlemen.

THE COURT: No, proceed.

Q Didn't you tell me just a minute ago that there were two tiers in the wings between these pallets of teas?

A There are more than two. The rugs are piled on top like this.

Q I am talking about the pallet load. Was there one pallet load and then another pallet load?

A No, tiers, across like this, not piled on top.

Q Was it just one pallet load?

A Of what, tea?

Q Of tea.

A No.

Q That is what I am trying to find out. In the wings where you were working you say at the time of this accident there were pallets of tea stowed?

A Yes, and loose ones, pallets and loose ones.

Q And the stow on which you and Mr. Ruffino were working on top of, was there tea at the bottom of that stow?

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Green - Cross

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1 Do you know what I mean by the stow?

2 A Yes, there were tea.

3 Q And was that one pallet high? I am talking
4 only about the tea.

5 A Yes, one pallet high. The height of it,
6 the pallet one height, the tea.

7 Q And was it all palletized in the area where
8 you were working or was some of it stowed loosely?

9 A They were all loose ones, but not what we
10 were standing on. We were standing on the rugs.

11 Q The tea itself, was it all on pallets where you
12 were working in that area --

13 A Yes, that's right.

14 Q -- or was some of it stowed loose?

15 A Where we were standing, it was palletized.

16 Q It was all on pallets?

17 A Yes.

18 Q And above that you had rugs?

19 A Piled on top of it, yes.

20 Q And how many heights or layers of rugs did you
21 have on top of the tea?

22 A I can't recall the height that it was now,
23 but it was roughly three, four heights piled on top of each
24 other.
25

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Green - Cross

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Q Three or four high?

A Yes.

Q Could you estimate for me how many rugs roughly there were in the wings?

A No, I wouldn't be able to tell you any more.

Q Was it a great many?

A So many were in the wings, yes, so many were in the wings, different lengths.

Q I say, was it a lot of rugs?

A Yes.

Q And did these rugs go from one end of the hatch on top of this stow all the way to the other end?

A Yes. Laid across this way.

Q And you say laid across. Are you indicating, were they laid along the axis of the ship so that one end of the roll of rugs was towards the bow and the other end of the roll was towards the stern?

A No, no. One length from inshore to offshore.

Q So they were athwartships, from one side of the ship to the other?

A Yes.

Q Is that the way they were stowed?

A That is the way they were stowed.

Q Were they all stowed in that fashion?

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Green - Cross

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A All came like that.

3

4

Q Now, in getting up to the top of this stow, how did you and Mr. Ruffino get there?

5

A We have to climb up.

6

Q And how did you climp up?

7

8

9

A On the tea. On the loosened tea that was on the side, in order to get the rugs out first. They tell us a truck was outside waiting for them.

10

Q And you climbed up on top of the stow of rugs?

11

A That's right.

12

13

14

Q When you get on top of the stow of rugs, how much space was there between the top of the stow of rugs and the overhead, the underside?

15

16

A To the ceiling? I don't remember. It was so high away from my head.

17

18

Q Could you stand up straight on top of that stow of rugs?

19

A No.

20

Q How did you work?

21

22

A Well, you got to bend over to get the rugs, take it from the wing.

23

24

Q At the time of this accident what were you doing?

25

A Discharging the rugs?

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Green - Cross

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Q What were you physically doing, you, yourself?

A We were working.

Q Were you lifting -- I am speaking now only of what you were doing, for the moment. Were you lifting one of these rugs?

A That's right. Was rolling them out.

Q You were rolling them out?

A Yes. That's the only way you could get them out from the wing.

Q You couldn't lift them?

A No, no, you couldn't never lift those, because they are not in one length. They are different lengths. You can't lift them. You can only roll them out, to let the man in the square strap them up and send them out.

Q Let me see if I understand you. You say the rugs were running from side to side.

A That's right.

Q And if this were the inshore side and this end of the roll would be the hatch square, isn't that so?

A Yes.

Q This pencil represents a roll. Now, in rolling them out, did you push them out this way?

A No, you can't push them that way.

Q What did you do, turn them around and roll them

wclk Green - Cross

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out?

A No, you roll them right over (indicating).

Q If they are at right angles to the square of the hatch, could you explain to me how you roll it off the top?

A They all came that way, so you can only roll them one way.

Q Did you roll them towards the aft end of the hatch or towards the forward end?

A No, towards the square.

Q Let me see if I understand you. Will you assume, Mr. Green, that this pencil I am holding was the roll of rugs.

A Yes.

Q And that this is the side of the ship, this finger.

A Yes.

Q Was it at right angles to the side of the ship, is that how they were stowed?

A That's right.

Q And the other end of this roll of rugs--

A That's right.

Q -- was out facing the square of the hatch, is that right?

1 wclk

Green - Cross

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2 A No, not to the square of the hatch.

3 Q What was it facing?

4 A It was facing the center of the hatch, not the
5 end of it.

6 Q Then it was stowed this way?

7 A No.

8 Q It was stowed this way?

9 A No, that way they are stowed, just like this.

10 And we had to roll them right over to the square of the
11 hatch.12 Q You roll them end over end, then? Did you roll
13 then end over end?14 A Yes, sir. That's the only way you can get them
15 out.16 THE COURT: Rolled them like this, is that
17 right?18 THE WITNESS: No, you keep rolling them like
19 this (indicating).20 Q You didn't stand these up on one end and roll
21 them end over end into the square?

22 A No, impossible, impossible.

23 Q Because they are very heavy, these rugs?

24 A Definitely. The length and everything. You
25 only can roll them. You can't stand them up.

1 welk

Green - cross

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2 Q Could two men lift one of these rolls?

3 A No. Not pick them up bodily. You can roll them
4 into a sling.5 Q I have trouble understanding you, Mr. Green,
6 but if you can will you explain to me, if one end of the
7 roll faces the side of the ship and the other the square
8 of the hatch, if you rolled it forward or aft you would
9 not be rolling it towards the square, would you?10 A There's only one way you could get those rugs
11 out is rolling them towards the square.12 Q When you had them this way, did you turn them
13 around so you could roll them into the square?14 A No. Was eight men working, and we could not
15 put a hook in it so we have all to team up and roll them
16 out. Because the chief mate was watching us take them out.

17 Q You didn't slide them out, you rolled them?

18 A You rolled them.

19 Q You didn't take them this way and push them
20 out into the square, is that right?21 A You rolled them to the square, where the rest
22 of the men can get them to put them in the sling.23 Q And you roll them just like you roll a piece
24 of pipe?

25

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Green - Cross

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A That's the only way they could get them out.

Q At the time of this accident who was working with this particular roll of carpeting other than you and Mr. Ruffino? Anybody?

A Well, the name of the men now I wouldn't be able to tell you their names, no, because it was eight men in the hold.

Q Was there more than just you and Mr. Ruffino?

A There were eight men in the hold.

Q Were they all working on this same rug?

A That's right. We were discharging the rugs then.

Q And were you on one side of this roll of rugs, rolling it out towards --

A From the wing, yes.

Q From the wing out into the square?

A That's right. We were taking them down from off the bales of tea, pallets of tea. He was on that side, I was on this side, to roll them off.

Q You were all on the same side of the --

MR. LASSOFF: Indicating, if your Honor please, with his hands one to the right and one to the left.

Q Were all of the longshoremen working this roll of rugs all on the same side of the roll as they rolled it towards the square of the hatch?

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Green - Cross

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2 A Not on one rug. Not on one roll.

3 Q How many longshoremen were on this particular
4 roll, the one you and Mr. Ruffino were working on?

5 A Two of us were on top of the tea, two men goes
6 up on top and rolls them over to two men below, and they
7 roll them over to the square where the rest of the men can
8 strap them up.

9 Q Mr. Green, did you tell me just a minute ago
10 that all eight men were working on this one roll?

11 MR. LASSOFF: Objection, your Honor.

12 THE COURT: No, I will permit it.

13 A Not on one roll. Two men was on top of the tea,
14 rolling them down.

15 Q And who were these two men?

16 A Mr., what's his name there?

17 Q Mr. Ruffino?

18 A Yes.

19 Q And you?

20 A Yes.

21 Q And you were the only two men up on top of this
22 stow?

23 A That's right.

24 Q And you rolled them down where?

25 A We dropped them below that pallet of tea, and

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Green - Cross

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the rest of the men that was with us could then roll it out to get them to the square.

Q Where you were putting them into the square, were there pallets of tea still stowed in the square?

A Yes, there was tea, loosened tea down there.

Q And the portion of the hatch square where you were pushing the rugs out, was there still tea in that portion of the square?

A Yes, loose tea in there.

THE COURT: When you say loose tea, what do you mean?

THE WITNESS: It was boxes, strapped in boxes, but not on a pallet.

THE COURT: They were in boxes but not in a pallet?

THE WITNESS: That is what I mean.

THE COURT: They were in boxes but not in a pallet?

THE WITNESS: That is what I mean.

THE COURT: They were still firm but in boxes?

THE WITNES: Yes.

THE COURT: All right.

BY MR. KAIN:

Q When these rolls were put in or put down into the

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Green - Cross

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square of the hatch by the longshoremen, did you bring them down on top of tea?

A Yes, on loose box.

Q Or did you bring them on to the deck?

A On the deck?

Q Yes.

A Well, after they are put in a sling they go on the deck.

THE COURT: But he means the deck of the hatch.

THE WITNESS: The deck of the hatch?

THE COURT: The hatch square, did you put them on the deck of the hatch square? Is that what you meant?

MR. KAIN: Yes, sir.

THE COURT: But you say on the hatch square on the deck there was this loose tea?

THE WITNESS: Yes, there was loose tea boxes.

Q So, if I understand you correctly, when you took these rolls of carpeting, these heavy rolls out of the wing, you dropped them down on these packets of loose tea?

A Yes.

Q Is that what you did with it?

A And the tea would be brought in the center.

Q That would be laid out in the hatch square on top of these loose cartons of tea?

1 wclk Green - Cross

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2 A That's right.

3 Q How many drafts did you take out of the hatch,
4 of these carpets or rugs?

5 MR. LASSOFF: Objection, your Honor, unless
6 we have a time.

7 THE COURT: No, I will permit it.

8 A The full amount I don't remember the amount that
9 was sent out now. I don't remember the other tea or rug
10 that was sent out. How many drafts were sent out on the
11 dock I don't remember.

12 Q Do you remember how many drafts of the rugs dis-
13 charged from the wings were taken out of the hatch before
14 Mr. Ruffino's accident?

15 A No, I don't remember.

16 Q Did you see Mr. Ruffino when he fell?

17 A Yes, I did.

18 Q What were you doing at the time you saw him?

19 A We were rolling out the roll.

20 Q Were you next to him or were you on the other
21 end?

22 A I was on the other side and he was on this side.

23 Q You were on one side of the roll and he was on
24 the other side of the roll?

25 A Yes, we go behind it, and I stand on one side

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Green - Cross

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to roll it over, and he was.

Q How far away from him were you?

A Far enough to -- pretty close that I could get to see him.

THE COURT: In distance how far was he?

Q How far was that, eight feet, ten feet away from him were you?

A No, it wasn't that distant.

Q How far were you?

A About four feet away from him.

Q About four feet away from him?

A Yes.

Q And on the other side of the roll from where he was standing, is that right?

A That's right.

Q What were you standing on at the time?

A I was standing on the rolls, another roll.

Q You were standing on rugs?

A Yes, sir.

Q What was he standing on?

A He was standing on a rug too.

Q Was he standing on anything? Did he stand at all on tea, skids of tea?

A No, the tea was below the center of the rugs.

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Green - Cross

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Q Oh, he wasn't standing on it.

A The tea was standing on rugs -- the rugs on top of the tea.

Q Was he standing on top of a single roll with both feet or did he have one foot down between the rolls?

A Oh, both feet.

Q On top of this same roll?

A That's right.

Q And when the accident happened, what happened? What did Mr. Ruffino do?

A I came off the --

Q What did he do with his feet when the accident happened?

A When I came down, he was between two palletized of tea and another case, and I help him up and I shook him up, and I said, "Are you all right?"

Q That is not my question, Mr. Green. My question is: You saw this accident happen, is that right?

A I did, yes.

Q What I want to know, if you can tell me, is, what happened to Mr. Ruffino's feet at the exact time of the accident.

A Well, he went -- he step on the end of the rug and there was no balance there, they just put them down like

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Green - Cross

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that, not knowing that there was no end, he step on the end of the rug, it went down, and he fell.

Q You mean he stepped on the very end of one of these rolls?

A Not the extreme end, it was impossible to the extreme end of it.

Q How far from the end?

A That distance that he stepped? I couldn't tell you what the length, how far towards, but I know he went over.

Q Did he move his feet at all just before this accident happened?

A Yes, we were there, rolling rugs, we had to move to roll the rugs.

Q So he was moving his feet at the time of this accident, is that right?

A Working.

Q When he fell, you say he fell to his left?

A Yes, he went over.

Q And which way was he facing when he fell to his left? Was he facing towards the front of the hatch, out towards the square of the hatch, facing inshore, towards the aft end? Which way was he facing?

A I think he was facing the square of the hatch.

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Green - Cross

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2 That is what we were doing.

3 Q He was facing towards the square?

4 A Yes, we were working, taking them from inside
5 towards the front.

6 Q So if he was facing the square and he fell to
7 his left, he would fall towards the forward end of the
8 hatch, is that right?

9 A We were working inshore.

10 Q I say, but the forward end of the inshore side.
11 Is that right? If this jury box rail here represents
12 the edge of the hatch square and he was facing this, he fell
13 to his left, he would be falling towards the forward end,
14 wouldn't he?

15 A I don't remember that now. But all I can tell
16 you is, he was rolling the rugs there, he was on one side
17 and I was on the other side.

18 Q I don't want you to guess, Mr. Green, but if
19 you know, did he fall towards the forward end of the hatch?

20 A I don't remember.

21 Q Do you remember in which direction he fell?

22 A No.

23 Q What did he fall into? Did he just fall over
24 this way or did he put his foot down into something?

25 A He went down.

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Green - Cross

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Q His whole body?

3

A Yes. I am the one that picked him up down there.

4

Q Where was the hole that he fell into? Was it

5

a hole in the stow?

6

A The rugs lie on top of the holes there. No

7

one could see what was below, there was a hole there or

8

not. As he stepped there, I saw him when he went down.

9

Q Did his body go down into the hole?

10

A Yes.

11

Q How far down?

12

A The height of the tea, six feet.

13

Q Six feet?

14

A Five to six feet.

15

Q At the time his body went down in the hole,

16

was this hole covered by rugs?

17

A Yes, that's right, it was all covered by rugs.

18

Q What happened to the rugs when his body went

19

down into the hole?

20

A The rugs went and bent down.

21

Q Both of these rugs bent and went down in the

22

hole where his body went?

23

A Therewere different markings there.

24

Q I understand. And when his body came to rest in

25

the hole, were these rugs that he had been standing on under-

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Green - Cross

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neath his feet still?

A No, no.

Q They weren't.

A No.

Q Where were they?

A He was down there.

Q Where were the rugs?

A They were still up there, on top, where we were working.

Q Did he fall off?

A The end of the rug bent right down, and he went down.

Q The rug bent down into this hole?

A And he went down.

Q Did you see the hole after the accident?

A Well, after the accident, and the mate, everybody was excited, --

THE COURT: No, did you see the hole after the accident?

A Yes, after the accident, we saw there was a hole there, after the accident.

Q How big was the hole?

A Well, it was big enough for a body to go through.

Q Was it three or four feet--

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Green - Cross

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A Roughly.

3

Q -- in diameter?

4

A Roughly.

5

Q And where was it in the stow?

6

A The hole?

7

Q Yes.

8

A Was inshore.

9

Q Well, what part inshore? Was it between the
10 stow and the side of the ship or was it somewhere inside

11

the stow?

12

A I don't remember now.

13

Q Do you remember, was there tea stowed around
14 the perimeter or the confines of this hole?

15

A No. Around the hold?

16

Q Yes, what was around the hole that he fell into?

17

A There was loosened tea and rugs on top.

18

Q He went all the way down to the deck with just

19

this --

20

A He went down to the loosened tea that was lying
21 down there, the loosened tea that was lying down there.

22

Q On the sides of this hole that you say he fell into,
23 that was about three or four feet, were the sides of this
24 hole made up of cases of loose tea or cases of tea?

25

A There was a hole there, there was nothing in

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Green - Cross

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2 that hole, there was an empty space that they put a rug
3 on top.

4 Q I understand that, but I am asking you, what
5 was around the empty space, the sides of the empty space?

6 A Cases of tea.

7 Q Cases of tea. Was this unpalletized cases of
8 tea?

9 A You have loose tea was down there. Loose tea.

10 Q That was what it was. It wasn't the tea that
11 was strapped to pallets, was it?

12 A No, no, no. What was below was loosened tea.

13 Q And how deep was this hole?

14 A Oh, five to six feet.

15 Q Five or six feet deep and about four feet in
16 diameter?

17 A Roughly.

18 Q How big was one of these cases, these loose
19 cases that was not palletized? What sizes were they?

20 A I don't remember the length or the depth of it
21 now, the width, right now.

22 Q You don't have any idea?

23 A No, the length or the width of it.

24 Q Was it more than four feet long?

25 A No, I don't think that much.

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Green - Cross

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Q Was it more than four feet high?

A No, they are all square boxes.

A Square boxes?

A Yes, they are.

Q That big (indicating).

Q Yes, roughly about this (indicating).

Q About that big.

A Yes.

MR. LASSOFF: Indicating about two-and-a-half feet, your Honor.

Q Now, after this accident, what did you do?

A I went and helped him up.

Q How did you help him up?

A I picked him up. I went down and I picked him up and I call the rest of the men.

Q Did you get down in the hole to pick him up?

A Well, I came off the pallet, I came off the palletized tea, and walked down, I climbed down and I came around and I picked him up. I said, "Are you all right?"

Q You climbed down where? Into the hole?

A Off the tea, that I was standing on.

Q I say, you were standing on tea at the time?

A Yes. We were discharging from the top of the tea.

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Q At the time he fell into this hole, you were on top of a stow of rugs, isn't that so?

A That's where we were working, that's where we were discharging from.

Q And that was these rolls of carpeting or rugs, is that right?

A That's right.

Q And when he was down in the hole, did you then go from the top of the stow of rugs down onto the stow of tea, is that what you did?

A I came down.

Q And in getting off the top of the stow of rugs and going to Mr. Ruffino's assistance, where did you go? Did you go out into the square of the hatch or did you stay in the wings?

A I came down off the tea.

Q Into the square?

A On the side of it, the strapped pallet. Came on the side and went to him and asked him if he is all right. Then I look at him and I call the rest of the men and I say, "Come, this man is hurt, he is in the hole."

Q Was he still in the hole when you got down?

A Yes, he was still there, lying there.

Q And where was he with respect to where you were?

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Was he in a hole that was beneath you?

A Definitely.

Q And how did you get down? You didn't come down into the square?

A No.

Q Did you come down --

A From the side.

Q -- from the stow of rugs next to the side of the ship?

A Yes, sir.

Q The skin of the ship, do you know what I mean by the skin of the ship, the hull of the ship?

A I came down on the loosened case of tea on the underside, on my side that I was working on, and come around to him.

Q I am trying to find out the side that you came down, whether it was your side or somebody else's side. Was that the side next to the skin or the hull of the ship, or was it the side out next to the square?

A The side to this side of the ship.

Q Was this hole between this stow and the side of the ship?

A No. There were tea between.

Q There was tea?

wclk

Green - Cross

160

1 A On the side.

2 Q Tea on the side of the ship, then this hold and
3 then more tea?

4 A That's right. The loosened was all on the other
5 side. They only can put the palletized in the square.

6 Q Didn't you tell me just a minute ago that when
7 you started work in the wings there was this stow of rolls
8 of carpeting from all the way forward in this hatch to all
9 the way aft to the inshore wing?

10 A This is the ship, this length. Rugs lay across
11 on top of the teas.

12 Q But didn't you tell me this went from one end
13 of that hatch to the other end laying across from the top
14 of the tea, these rugs?

15 A Not from this end to the other. We never
16 stowed them like that. They came along like this and just
17 leave them like this (indicating).

18 Q Then how far, what distance did you have from
19 the inshore wing where the rugs were stowed this way, from
20 the front end of that hatch to the aft end --

21 A I don't remember.

22 Q -- what the percentage of it was these rugs?

23 A I don't remember now.

24 Q At the time of Mr. Ruffino's accident, where
25 in the hatch square with reference to distance now from

1 wclk

Green - Cross

161

2 forward to the aft end, where were you? Were you in the
3 middle of the hatch, in the inshore wing, were you in the
4 forward end in the inshore wing or the aft end of the
5 inshore wing?

6 A I was on the inshore end. I was in the forward
7 end.

8 Q In the forward end?

9 A He was on the left side and I was on the right
10 side, in the wing.

11 Q Was the stow that you and he were working on
12 in the forward end of the inshore wing?

13 A I don't remember now.

14 Q How did you get Mr. Ruffino out of this hole?

15 A After I called to the men that the man was
16 hurt, they came around and all the loose cases of tea that
17 was there we get them up, take them out to get him up.

18 Q When you say, "we," you mean the other men in
19 your gang?

20 A The eight men in the hold.

21 Q The eight men in the hold and this is your
22 regular gang?

23 A Yes.

24 Q And did all eight men in the regular gang do
25 this?

wclk

Green - Cross

162

1
2 A I don't know if there was extra men there. But
3 we always work together on one side of the ship.

4 Q Do you remember the other hold men who did this
5 with you?

6 A I don't remember the name.

7 Q How long have you been a regular member of this
8 gang?

9 A Oh, I have been there, in that pier, since '71.

10 Q Since 1971?

11 A Yes.

12 Q Are you still a member of this gang, same gang?

13 A No, the gang is broken up now. The pier is
14 closed.

15 Q When did the gang break up?

16 A About a year ago the pier closed. Roughly a
17 year.

18 Q Roughly September sometime?

19 A Yes.

20 Q How did Mr. Ruffino get out of #6 hatch?

21 A When he was able to climb the ladder I went
22 up with him.

23 Q Can you tell me where the ladder was? Was
24 the ladder in the square of the hatch?

25 A That's right.

wclk

Green - Cross

163

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Q One of those straight metal ladders?

3

A Yes, on the side of the ship.

4

Q In the hatch itself, inside the hatch coaming?

5

A Yes, you have to climb the coaming and come over

6

the side.

7

Q And did he have to step over the coaming when

8

he came up?

9

A Yes.

10

Q How did he go up this ladder?

11

A He went up by himself. I was with him. I was

12

behind him while he was going up.

13

Q He climbed up the ladder ahead of you and you

14

came behind him, is that right?

15

A Yes.

16

Q While he was down in the #6 hatch, before he

17

left the hatch and after the accident, did he get any first-

18

aid treatment from anybody or any medical treatment?

19

A No, they didn't -- the chief mate said we should

20

give him some water to drink.

21

Q The chief mate said this?

22

A Yes, that is what he said.

23

Q Did you get him some water to drink?

24

A Yes, we gave him a cup of water.

25

Q Did you do anything else for him?

wclk

Green - Cross

164

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A No, all I did was to shook him and put him --
shake him and see if he is all right.

Q Was the chief mate down in this hold?

A Yes.

Q Or this 'tween deck where the accident happened?

A Yes, he was down there.

Q Did he see the accident happen, if you know?

A Definitely, he was down there. He tell us to
give him some water.

Q Did he tell you anything else?

A No. He went off the ship.

Q After you left the ship or after Mr. Ruffino
left the ship, did you go with him?

A I went to the office with him.

Q What office was that?

A The timekeeper office.

Q On the pier?

A Yes.

Q What did you do there?

A They asked me what happened, and I let them
know what happened. He was working with me and --

Q Did they ask you or Mr. Ruffino?

A They ask me what has happened. I told them
that he fell in a hole.

wclk

Green - Cross

165

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Q Did they ask you or Mr. Ruffino?

A They ask me.

Q Did they ask Mr. Ruffino?

A Then I leave the office.

Q Did you tell them what happened?

A Yes, I tell the timekeeper what happened.

Q Did he ask you to sign any statement or anything?

A No.

Q Did you sign a statement for Mr. Lassoff?

A Mr. Lassoff? This is Mr. Lassoff here?

Q This is Mr. Lassoff.

A No.

Q Did you sign a statement for him at any time in this case?

A No.

Q Did you sign a statement for anybody in this case?

A No.

Q Did you interview anybody in this case?

A If I interview anybody in this case?

Q Yes. Anybody talk to you about this case?

A Yes.

MR. LASSOFF: May I object. It is two different questions, your Honor. I have no objection to was he inter-

viewed. But did he interview anybody?

THE COURT: No, overruled, overruled.

Q Did you talk to anybody about this case?

A Yes, I told them just what I am telling you now.

Q I say did you talk to anybody about this case?

A Yes, from the insurance company.

Q When was that, do you remember?

A They came to the pier.

Q When?

A About a week after the accident.

Q About a week after the accident?

A Yes.

Q And did you sign a statement then?

A No.

Q If you know, did they write down what you said?

A I don't know. They ask me what happened and I tell them.

Q Is that the only time you have talked to anybody before today about this accident?

A One came to the pier where I am working on and asked me the same thing.

Q When was that?

A I don't remember now. Early this part of the year.

wcl

Green - Cross

167

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Q This year?

A Yes.

Q And on that occasion did you sign anything?

A No. I just told him what happened.

Q But you didn't sign anything?

A No.

Q When did you first learn that Mr. Ruffino had

a lawsuit?

A When I was subpoenaed.

Q When you were subpoenaed?

A Yes.

Q And when was that?

A Yesterday.

Q And that is the first time you saw Mr. Ruffino

since this accident happened?

A The second time I have seen him.

Q Where were you subpoenaed yesterday?

A I was subpoenaed at my home. I got this in

the mail.

Q Were you given a subpoena?

A Yes, I got it in the mail.

Q You got it in the mail?

A Yes.

Q Did you get any fee or any money with it when

A No. It is an empty letter. No, that's an
letter. No.

A That's a subpoena to be here. To be here today.

A Yes.

A No.

A Somebody came by the pier and I was called
office and asked what had happened and I told him
he same as I see.

A I told him what I see.

A I told him what I see.

A No, I don't remember.

A I don't remember the day.

wclk

Green - Cross/Redirect

169

Q And was the man's name you talked to, do you remember, was it DeSchino?

A I don't recollect his name.

Q If I understand you correctly, you talked to somebody about a week after this accident, and then you talked to somebody in the early part of this year. Is that right?

A Yes. Somebody came to the pier.

Q And what did you tell these two gentlemen?

A Pardon? Just what I saw happen.

Q You told them what you saw happen?

A Yes.

Q Did either one of these gentlemen ask you to sign a statement?

A No, nobody asked me. They just come to ask me what happened and I tell them.

MR. KAIN: I have no further questions.

THE COURT: Redirect?

MR. LASSOFF: Just a couple of minutes, your Honor.

REDIRECT EXAMINATION

BY MR. LASSOFF:

Q Mr. Green, I want you to take a look at this file and imagine that this is a ship and that this is the

xxxx

wcl

Green - Redirect

170

front of the ship over here, towards the jury box, and that other left side of this ship is the pier.

A Yes.

Q That would be the inshore side.

A That's right.

Q And that you were working on the inshore wing over here.

A Yes.

Q To get these mgs off that stow of tea, would you be rolling this way towards the square of the hatch?

A That's right, from the inshore.

Q And would the rugs be stowed this way fore and aft?

A Yes.

MR. LASSOFF: No further questions.

THE COURT: Anything further?

MR. KAIN: No.

THE COURT: You may step down.

(Witness excused.)

THE COURT: We are going to suspend for today. We never know, as judges, from day to day whether we are going to be involved in trials or not, and so we schedule matters for early in the morning and late at night. I don't have anything scheduled for late this afternoon

1 jhlk 60
2 MR. KAIN: Yes, I will, your Honor. May I
3 ask approximately when your Honor anticipates we will
4 adjourn for the day?

5 THE COURT: Somewhere around a quarter to five.

6 MR. KAIN: And when will we start tomorrow?
7 I am trying to fit in doctors.

8 THE COURT: The same rules apply to everybody.

9 MR. KAIN: I understand that, sir, but could
10 you tell me approximately when your Honor anticipates
11 we will start?

12 THE COURT: Probably 9:30 tomorrow morning. I
13 don't know whether we have anything on. I have a couple
14 of pre-trials that shouldn't take long. With four pre-
15 trials tomorrow morning we will be ready to go somewhere
16 around a quarter to ten.

17 With respect to your requests to charge and
18 so forth, have you gentlemen gotten together --

19 MR. KAIN: No, your Honor.

20 THE COURT:--as I had directed you to do?

21 MR. LASSOFF: I think we are unalterably
22 opposed, your Honor. We have had these same sets of requests
23 to charge as recently as two weeks in another case and
24 except for minor examples in Mr. Kain's charge we do not
25 agree as to the law at all and Mr. Kain specifically dis-

1 jhlk 61

2 agrees with Judge Weinfeld's charge on a latent defect. I
3 think when your Honor reads the charge, and our case is a
4 much stronger case than the case that Judge Weinfeld made
5 that charge, in this case we have actual proof that a
6 mate was in the hatch at the time of the accident, and
7 this is a discharge case, not a case where cargo is loading
8 in the port of New York, this is a case where the ship
9 came in from India with this cargo --

10 THE COURT: I don't know how much Judge Weinfeld's
11 reliance on the failure to take an exception is involved.
12 The only other thing that I have to go by is the Napoli
13 case, in which Judge Van Graafland adopts the restatement
14 rule, 343 (a).

15 MR. LASSOFF: Yes, restatement of torts and
16 foreseeability.

17 THE COURT: I assume, substituting what is
18 stated in the restatement, that the charge probably should
19 be a shipowner is not liable to a longshoreman for physical
20 harm caused to him or to a longshoreman by any activity
21 or condition on the ship whose danger is known or obvious
22 to a longshoreman unless the shipowner should anticipate
23 the harm despite such knowledge or obviousness.

24 I certainly obviously have to charge that
25 because that is the Court of Appeals as of May 1976.

jhlk 62

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1 jhlk 62
2 MR. LASSOFF: Yes, sir.

3 THE COURT: Do you have that, Mr. Kain?

4 MR. KAIN: Yes, sir.

5 THE COURT: I think I have to charge that.

6 MR. LASSOFF: I have no objection to that charge,
7 your Honor.

8 THE COURT: I think if I incorporate that into
9 Judge Weinfeld's charge that is the only change I have
10 to make, isn't it?

11 MR. LASSOFF: I would think so, your Honor.
12 It covers the latent defect as well, Judge Weinfeld's
13 charge does.

14 MR. KAIN: Might I refer your Honor to the
15 Ramirez case. I think it is in the Napoli opinion. That
16 is a west coast case. I don't have the opinion here, but
17 may I refer your Honor to that particular case.

18 THE COURT: The Ramirez case is noted in the
19 Court of Appeals decision, the Napoli decision.

20 MR. KAIN: That's correct, your Honor. It is
21 quoted with approval. I think that is a little stronger
22 on the point that we are arguing than the Napoli case. We
23 have quoted the Huggins case.

24 THE COURT: It says that the amendments to
25 the Act of 1973 eliminated the concept of a nondelegable

1 jhlk 63

237

2 duty to provide a safe place to work. There is no question
3 about that. But an invitee is entitled to, as Judge Van
4 Graafland stated in the decision in the Napoli case, to
5 instructions in accordance with 343(a) of the restatement.
6 I certainly have to follow that. Whether you want me to
7 follow it or not, I am going to follow it. A district
8 judge's obligation is to follow the decisions of his own
9 circuit where they have ruled upon it and to give some
10 weight to other circuits where his own circuit hasn't
11 ruled upon it.

12 MR. KAIN: May I offer your Honor a copy of
13 Judge Metzner's opinion in the Huggin's case, which is
14 cited?

15 THE COURT: Yes, I would like to see the opinion
16 on that. Again, Judge Metzner's decision, all I get from
17 it is what you have given to me here in connection with it,
18 it preceded, I think, the decision in the Napoli case.

19 MR. LASSOFF: Yes, it did, your Honor. Huggins
20 was my case also.

21 THE COURT: No doubt about it.

22 MR. COURT: Again, if you look at Judge Weinfeld's
23 charge, with incorporation of the Napoli thing, I intend
24 to charge that way.

25 MR. KAIN: I haven't had a chance to look at it,

1 jhlk 64

2 your Honor, but I understand that the plaintiff in Judge
3 Weinfeld's case presented his case, at which point the
4 defendant rested, and I haven't read the charge, but I am
5 wondering about the context of it. I don't know, for
6 example, --

7 THE COURT: Why don't you do this. Why don't
8 you read it. We are wasting time because you haven't read
9 it.

10 MR. KAIN: I understand that, sir. What I am
11 trying to say is it is not apparent to me from reading this,
12 for example, whether the plaintiff offered some testimony
13 that might justify this.

14 THE COURT: That would be a question of fact
15 as to whether or not he knew or should have known of --

16 MR. KAIN: There must be some proof of it.

17 MR. LASSOFF: We had no expert in that case,
18 your Honor.

19 THE COURT: At the present stage of the pro-
20 ceedings I think Mr. Lassoff would agree that there has
21 been no proof offered as to any knowledge, actual, on the
22 part of the shipowner.

23 MP. LASSOFF: Just constructive, your Honor.

24 THE COURT: I don't even know that you have
25 offered anything so far on the question of constructive

1 jh1k 65

2 notice.

3 MR. LASSOFF: That is what my maritime expert
4 is about.

5 THE COURT: At the present state of the record
6 there isn't any.

7 MR. LASSOFF: I think there is, your Honor.
8 We have statements that this ship arrived without any
9 dunnage or plywood and it arrived from India that way,
10 before our men ever went there.

11 THE COURT: The act says that the shipowner
12 should not be responsible for any duties which are the
13 duties of a stevedore. It doesn't say, and I don't know
14 that anybody has shown it, the stevedore in both loading
15 and unloading.

16 MR. LASSOFF: I think the act here can only
17 apply to acts under the jurisdiction of the United States,
18 it certainly can't apply to outboard stevedores.

19 THE COURT: Maybe you better look at it. I
20 haven't looked at the history of it. The language would
21 be sufficient to cover stevedoring in the loading and dis-
22 charging. The language is that broad, at least, in the
23 act.

24 MR. LASSOFF: I have my expert, your Honor.

25 THE COURT: All right.

jhlk 67

Anastasio - Direct

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AFTERNOON SESSION

1:35 p.m.

(In open court; jury present.)

THE COURT: Proceed.

MR. LASSOFF: Good afternoon, your Honor. This is Mr. Anastasio.

THE COURT: All right.

S A V E R I O A N A S T A S I O, called as a witness on behalf of the plaintiff, having first been duly sworn, was examined and testified as follows:

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. LASSOFF:

Q Mr. Anastasio, what is your occupation?

A I am a foreman for Universal Stevedoring Company.

Q What kind of a foreman are you?

A Load and discharge ships.

Q Are you what is called a ship's foreman in the trade?

A Yes.

Q As a ship's foreman are you in charge of all the gangs that work on board a ship?

A Yes, sir.

xxxx

1 jhlk GS Anastasio - Direct

2 Q That would be all of the hatches being worked
3 by all of the longshoremen on the ship?

4 A Yes, sir.

5 Q How long have you been a ship's foreman?

6 A 30 years.

7 Q Can you tell us the names of the various
8 stevedoring companies that you have been a ship's foreman
9 for?

10 A Universal, American Stevedore, Luckenbach,
11 ITO.

12 Q Are you presently employed as a ship's foreman?

13 A Yes, sir.

14 Q Where are you ship's foreman at the present
15 time?

16 A Pier 6 Bush.

17 Q Who do you work for at the present time?

18 A Universal Stevedoring Company.

19 Q Would you tell us what the duties of a ship's
20 foreman are basically?

21 A To load and discharge ships, see that the men
22 are safe, working in a safe condition.

23 Q With regard to the loading and discharge of
24 ships, is there such a thing as a cargo stowage plan?

25 A Yes, there is.

1 jhlk 69 Anastasio - Direct

2 Q Who supplies the cargo stowage plan?

3 A The steamship company.

4 Q Is the cargo in a ship loaded and discharged
5 pursuant to a cargo stowage plan?

6 A Yes, sir.

7 Q Who makes up that cargo stowage plan?

8 A The ship.

9 Q When you load or discharge cargo do you do it
10 according to the plan supplied you by the ship?

11 A Yes, sir.

12 Q Mr. Anastasio, I want you to assume that on
13 January 29, 1974 a ship called the JALAJYOTI was being dis-
14 charged at pier 12 Port Authority Brooklyn and that this
15 is an Indian steamship company and that in the #6 hatch of
16 said ship in the upper 'tween deck level in the port inshore
17 wing there is a stow of pre-palletized tea in cases on
18 skids, that on top of this single layer of tea in the wing
19 there is a stow of rugs wrapped in burlap and these rugs
20 have different sizes, some being eight feet long, some
21 being ten feet long, some being twelve feet long.

22 In your experience as a longshoreman was it
23 necessary before loading these rugs on top of these skids
24 of tea to do anything with regard to a flooring?

25 A Yes, sir, put --

1 jhlk 70 Anastasio - Direct

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2 Q What is necessary to be done?

3 A You can either put a plywood floor or a dunnage
4 floor.

5 Q Would you tell the jury what dunnage is,
6 first of all?

7 A Dunnage.

8 THE COURT: What is it, what does it look like?

9 THE WITNESS: It is boards.

10 THE COURT: I know. You are talking to some
11 people that don't know anything about it. So make believe
12 you are talking --

13 THE WITNESS: Five inches wide, about twelve to
14 fourteen feet long.

15 THE COURT: What?

16 THE WITNESS: Dunnage.

17 THE COURT: What is it made of?

18 THE WITNESS: Wood.

19 THE COURT: They are strips of wood?

20 THE WITNESS: Five inches by twelve, fourteen,
21 sixteen feet long.

22 THE COURT: What is the thickness?

23 THE WITNESS: About three-quarters of an inch,
24 an inch.

25 THE COURT: How is it --

jhlk 71

Anastasio - Direct

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THE WITNESS: Plywood is four by eights.

THE COURT: How do you use it?

THE WITNESS: You cover the floor with any --

THE COURT: How do you go about it?

THE WITNESS: You get a draft of dunnage, put it down and make a floor, so that you cover all spaces that are left open by cargo.

BY MR. LASSOFF:

Q So that you would cover any spaces that are left open by cargo?

A Yes, sir, that a man could go into.

Q And make a solid floor for the men to work on?

A That's right.

Q Would that be necessary to do before rugs are placed on top of these skids of tea?

A Yes, sir.

Q Incidentally, who supplies the dunnage to do this?

A The steamship company.

Q Do you yourself supply any dunnage unless it is ordered by the steamship company?

A None whatsoever.

Q Is there an extra charge for dunnage?

A If we have to, yes, sir.

1 jh1k 72 Anastasio - Direct

2 Q So that it is not in the usual stevedoring
3 contract?

4 A No, sir.

5 Q In order to use dunnage who do you have to get
6 the orders from?

7 A Either the port captain or the chief mate on
8 the ship.

9 Q Can you use dunnage without these people's
10 permission?

11 A It is their dunnage. You have to ask them.

12 MR. KAIN: If your Honor please, I have an
13 objection to this witness testifying on --

14 THE COURT: Yes. Sustained.

15 Q Have you yourself been a ship's foreman on
16 Indian ships?

17 A Been on all types --

18 THE COURT: There is no objection to his testify-
19 ing as an expert, but we are concerned with this particular
20 ship and what was done on this particular occasion.

21 MR. KAIN: We are concerned with a loading
22 operation in India and no foundation has been laid for
23 this witness' --

24 THE COURT: I understand. That is why I say
25 what was done with this particular ship and the custom and

1 jhlk 73

Anastasio - Direct

2 practice there. That is the reason for sustaining the
3 objection.

4 Q With regard to loading operations in foreign
5 ports, are the same practices followed as are followed
6 here?

7 THE COURT: He hasn't been qualified yet.

8 That is the basis of your objection?

9 MR. KAIN: Yes, your Honor, unless there is a
10 foundation laid to show the witness is familiar with
11 foreign ports.

12 THE COURT: Yes.

13 BY MR. LASSOFF:

14 Q During your work as a ship foreman do you have
15 to supervise discharging of ships from foreign ports?

16 A Yes, sir.

17 Q If you had discovered a condition in working
18 this ship where spaces were left in cargo and there was
19 no dunnage who would you report it to?

20 A Chief mate.

21 Q Whose job would it be to correct the condition?

22 A They would have to supply the dunnage or the
23 plywood to cover it.

24 Q Incidentally, when tea is shipped to the port
25 of New York are the cases that it arrives in of a uniform

1 jhlk 74

Anastasio - Direct

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2 size?

3 MR. KAIN: I object, if your Honor please,
4 unless a foundation is laid.

5 THE COURT: Sustained.

6 Q Have you discharged tea in the port of New York?

7 A Yes, sir.

8 Q On many occasions?

9 A Yes, sir.

10 Q Does it always arrive in the same type of
11 packaging?

12 A No.

13 MR. KAIN: If your Honor please, I have an
14 objection unless we are talking about the type --

15 THE COURT: Sustained. I don't need anything
16 further. Sustained.

17 Q I want you to assume that on this occasion the
18 tea on these skids were in wooden cases about two and a half
19 feet square. In your experience is that a standard con-
20 tainer for tea?

21 A Yes, sir.

22 Q And I want you to further assume that the skid
23 and tea thereon was approximately four by six and to a
24 height of about five or six feet. In your experience is that
25 a standard skid of tea?

1 jhlk 75 Anastasio - Direct

2 A Yes, sir.

3 Q In connection with stowing that standard skid
4 of tea in the wings of hatch #6 would there necessarily
5 have to be spaces in stowing those skids of tea?

6 A Yes, sir.

7 Q Tell us why.

8 A The #6 hatch is not square.

9 Q #6 hatch is not square?

10 A It is not square. It is a poop deck.

11 MR. KAIN: If your Honor please, there is no
12 foundation laid for this --

13 THE COURT: Yes. Sustained.

14 Q Assume, if you would, that the #6 hatch is the
15 last hatch on the ship. In your experience, are both #1
16 and #6 hatches on all ships narrower than the other hatches?

17 MR. KAIN: I have an objection.

18 THE COURT: Sustained.

19 Q Have you yourself seen an Indian ship called
20 the JALAJYOTI?

21 A No.

22 THE COURT: Do you know anything about that ship?

23 THE WITNESS: No, sir.

24 THE COURT: You don't know of any sister ships
25 like it?

1 jh1k 76 Anastasio - Direct

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2 THE WITNESS: Well, I have seen ships like it.

3 THE COURT: Sister ships, which would have the
4 same characteristics normally.

5 THE WITNESS: Well, all ships in #1 and 5
6 narrow.

7 THE COURT: No, no. You haven't seen this ship.

8 THE WITNESS: No, sir.

9 THE COURT: And you haven't seen any sister
10 ship?

11 THE WITNESS: No, sir.

12 BY MR. LASSOFF:

13 Q With regard to these skids of tea, how are they
14 held on the skids?

15 A They are strapped on.

16 Q In connection with this kind of stow of cargo
17 do these skids move or shift in transit?

18 A They can if they are spaced in-between.

19 Q And do the straps break during transit?

20 MR. KAIN: If your Honor please --

21 THE COURT: Sustained.

22 Q In loading this type of cargo is it necessary
23 to take into account that in the course of transit the
24 cargo may shift?

25 MR. KAIN: Objection, if your Honor please.

1 jhlk 77 Anastasio - Direct

2 THE COURT: Yes. Sustained.

25.

3 Q When you load a ship, when any ship is loaded,
4 is it necessary to see that the cargo does not move while
5 it is being shipped?

6 MR. KAIN: Objection, if your Honor please.

7 THE COURT: Sustained.

8 Q In any hatch on any ship when you are loading
9 skids of tea of the dimensions previously described to you
10 would there be spaces in the stow?

11 MR. KAIN: Objection, if your Honor please.

12 THE COURT: Sustained.

13 Q On this ship, in the #6 wing, loading skids
14 approximately four feet wide by six feet long with a
15 height of five to six feet, in loading those skids one
16 level high would there have to be spaces on the top of that
17 stow?

18 A Yes.

19 Q What was your answer?

20 A Yes, sir, in the #6 hatch.

21 Q In your experience as a ship foreman was it
22 necessary to have either plywood or dunnage covering those
23 spaces prior to loading rugs on top?

24 A Yes, sir.

25 MR. LASSOFF: No further questions.

1 jhlk 78 Anastasio - Cross

2 CROSS-EXAMINATION

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3 BY MR. KAIN:

4 Q Mr. Anastasio, your experience as a ship's
5 foreman has been entirely in the port of New York, is that
6 correct?

7 A Yes, sir.

8 Q You have never supervised or worked in steve-
9 doring operations in any foreign port of any kind?

10 A No, sir.

11 Q You mentioned dunnage.

12 A Yes.

13 Q Would it be accurate to describe dunnage as
14 hard wood of random widths and random lengths and approxi-
15 mately an inch in thickness?

16 A Yes.

17 Q Would you tell me, in connection with your
18 loading operations, and I am talking here in the port of
19 New York -- you do load and you have supervised the loading
20 of palletized cargo in the port of New York, is that correct?

21 A Yes, sir.

22 Q In loading pallets into the wing how does the
23 longshoreman or the stevedore do this?

24 A With a hilo.

25 Q That is machinery?

1 jh1k 79 Anastasio - Cross

253

2 A Yes, sir.

3 Q Is it necessary -- and again I am referring
4 here to your experience in New York -- to use machinery
5 to move these pallets in?

6 A Yes, sir.

7 THE COURT: Will you describe a hilo? We
8 have had it said here several times. What is a hilo?

9 THE WITNESS: A fork machine, a forklift.

10 THE COURT: A little tractor and in the front
11 of it --

12 THE WITNESS: You got two arms.

13 THE COURT: Two arms that reache in under the
14 pallet, there is room under the pallet?

15 THE WITNESS: Yes, sir, space underneath the
16 pallet.

17 THE COURT: The fork goes in underneath there
18 and lifts the pallet straight up?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right.

21 BY MR. LASSOFF:

22 Q In the ships which you have loaded or super-
23 vised the loading of in the port of New York isn't it true
24 that when you load a cargo ship with general cargo it is
25 impossible to eliminate all spaces in the stow?

- 1 jhlk 80 Anastasio - Cross
- 2 A Yes, sir.
- 3 Q And that is because --
- 4 A Different size cargo, general cargo.
- 5 Q It is different size cargo and it is not like
- 6 a box of a child's blocks?
- 7 A No, sir.
- 8 Q You fit these into a predetermined space and
- 9 there are different shapes and different sizes?
- 10 A That is right. You try your best to load it --
- 11 Q As closely as you can?
- 12 A Yes, sir.
- 13 Q And when you do this you have things like
- 14 hatch ladders, ventilators, stanchions and things that come
- 15 down into the hatch that you have to stow around, isn't
- 16 that so?
- 17 A Yes, sir.
- 18 Q Carpeting, rolls of carpeting or woolen rugs
- 19 in rolls, if you know, is that valuable cargo?
- 20 A Yes, sir.
- 21 Q That is expensive cargo?
- 22 A Yes, sir.
- 23 Q Have you ever had occasion to load rugs?
- 24 A I did.
- 25 Q You have loaded them aboard ship here in New

1 jhlk 81 Anastasio - Cross

2 York?

3 A Top stowage, yes, sir.

4 Q And you don't put them under anything, do you?

5 A No, sir, that is right.

6 Q You know what a cant line stowage is, don't you?

7 A Yes.

8 Q Are rugs loaded pretty much the same way you
9 would load pipe?

10 A Yes.

11 Q You understand what I am talking about, Mr.

12 Anastasio. I am talking about long rolls of rugs.

13 A Right, foreandaft, yes, sir.

14 Q Would you lay say on a bottom tier a row of
15 rugs --

16 A Dunnage.

17 Q I am talking your bottom tier. Let's say
18 it is either on dunnage or on the floor of the 'tween deck
19 or on dunnage on the floor of the 'tween deck. I am talking
20 about the stow of the rugs themselves. Do you lay them
21 down foreandaft normally?

22 A Fore and aft, yes, sir.

23 Q When you come in on the second tier do you put
24 one of these round rolls between two of them on the bottom
25 tier?

- 1 jhlk 82 Anastasio - Cross
- 2 A In cells, yes, sir, in between.
- 3 Q You don't dunnage between the tiers of these
- 4 carpets, do you?
- 5 A We take so many heights in dunnage, yes, sir.
- 6 Q But you don't dunnage between each tier as you
- 7 go up, isn't that so?
- 8 A No.
- 9 Q Again, I am talking about your experience.
- 10 When you load a ship and you, as you must, have certain
- 11 spaces in the cargo --
- 12 A Yes, sir.
- 13 Q -- don't you try to make it as solid as
- 14 possible in the wings?
- 15 A Yes, sir.
- 16 Q And bring it out into the middle of the hatch,
- 17 so that if you have a space it will be in the hatch square?
- 18 A Yes, sir.
- 19 Q And when you load a ship isn't it your practice
- 20 to fill in spaces in the square if you have them?
- 21 A Yes, sir.
- 22 Q Assuming you had a stowage of palletized tea, pr
- 23 palletized tea, and you had a space -- and I am not re-
- 24 ferring now to two, three inches -- you had a space in the
- 25 square of the hatch, width in between these pallets of tea --

1 jh1k 83 Anastasio - Cross

2 A In between the pallets of tea or are you talking 257
3 the rugs?

4 Q Between the pallets. Forget the rugs for a
5 moment. Suppose you have stowed by machine these pallets
6 of tea in the wings.

7 A Yes, sir.

8 Q And then you were out in the square of the
9 hatch.

10 A You had space maybe for a case of tea.

11 Q Assuming it was palletized cargo, would you
12 break up a case of tea and put one down in there?

13 A Yes, sir.

14 Q And if you didn't have something you would fill
15 in with something? In other words --

16 A I would try, yes, sir, cargo.

17 Q Possibly dunnage?

18 A Cargo or dunnage, yes, sir. That would be
19 the draft of dunnage to chock it from moving from side to
20 side. That would not be dunnage across the open space in
21 between.

22 Q I understand. Down into the space is what you
23 are talking about?

24 A That is right, correct.

25 Q Assuming you had palletized tea in the square

jhlk 84

Anastasio - Cross

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1 of the hatch and this tea was overstowed -- you know what
2 I mean by overstowed?
3

4 A Yes, sir.

5 Q What is that?

6 A Overstow that doesn't come out in this port
7 here, it comes out in a different port.

8 Q Say one lot of cargo is overstowed over another
9 one. That means it is on top of it, isn't that so?

10 A Yes, sir.

11 Q So if you had a stowage, and now I am talking
12 about a discharging operation, and again here in the port
13 of New York, if you had a stowage of chests of tea over-
14 stowed or you had a stow of carpets on top you would in
15 discharging take the cargo on top, you would take the
16 carpets out first?

17 A Yes, sir.

18 Q And you wouldn't expect, assuming you were
19 loading a ship, you wouldn't expect to put these rolls of
20 carpets under anything else, would you?

21 A Yes, sir.

22 Q You would expect to load it under something else

23 A Oh, no, sir.

24 Q Isn't that normally the top stowage?

25 A Top stowage, yes, sir.

jhlk 85

Anastasio - Cross

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Q Rolls of carpets, assuming rolls of carpets about a foot, foot and a half in diameter, ten to twelve feet long, are they pretty heavy?

A Yes, sir.

Q In the port of New York what would you use as ship's foreman to discharge them?

A Slings.

Q What kind of slings?

A Rope slings.

Q And how would you place these slings on these rolls?

A Right around the roll and choke it.

Q When you say "around the roll" --

A Place the sling on the floor, roll the rug on the sling, and then choke it.

Q Rolls of the type I described, assuming you were supervising it, how many would you put in each draft, approximately?

A Oh, one or two.

Q And you would roll these rugs onto --

A Onto the sling, choke it, make a draft out of it.

Q When you say "choke it," you mean in effect tighten a noose around it?

A Right.

1 jhlk 86 Anastasio - Cross

2 Q Where on the rolls would you place the slings?

3 A On both ends.

4 Q On both ends?

5 A Yes, sir.

6 Q So that you have --

7 A It is going to bend on you no matter where you
8 put this thing. So you try to get it in as close as you
9 can, so she don't give you so much of a bend.

10 MR. LASSOFF: Indicating with his hands, moving
11 his hands toward the middle of the rug.

12 A You bring the slings in, not right on the end,
13 you know, in a couple of feet in from the end of the rug
14 itself.

15 Q The rugs that you have loaded or discharged --
16 you have, I thought you told me a minute ago, discharged
17 these rolls of carpeting, is that correct?

18 A Yes, sir.

19 Q Have you also loaded them?

20 A Yes, sir.

21 Q On the rolls that you have loaded and dis-
22 charged is there a core or an extra piece or something in
23 these rolls or are they just rolls of rugs?

24 A Some of them have, some of them don't have.

25 Q Mr. Anastasio, have you been represented in any

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Anastasio - Cross/Redirect

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lawsuits or any claims or in any matters by Zimmerman and
Zimmerman?

A Zimmerman and Zimmerman?

Q Mr. Lassoff or his law firm represented you?

A Yes, I did. As a matter of fact, I did against
him.

Q How often have you been represented in the past?

MR. LASSOFF: Your Honor, I think his statement
was, "I did against him," not for him.

THE COURT: That is what he said.

Q How often have you been represented by Mr.
Lassoff?

A How often? Just that one case and then he had
a minor case for me that I got hurt on the pier myself.

Q He has handled one case of yours?

A That is all.

Q Has his firm handled any cases for you, Zimmer-
man and Zimmerman?

A No, sir.

MR. KAIN: I have no further questions.

REDIRECT EXAMINATION

BY MR. LASSOFF:

Q Mr. Anastasio, did you, when you said against
him, did you mean that you testified against me, against

xxxx

1 jhlk 88 Anastasio - Redirect

2 my client in a case?

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3 A Yes, sir.

4 Q And this case that I handled for you, was that
5 a no lost time case?

6 A Yes, sir.

7 Q And that is the only time I ever had anything
8 to do with you, is that correct?

9 A Yes, sir.

10 Q Assuming once again, if you would, that you
11 are going to load these rugs on top of these skids of tea,
12 was it necessary to have a solid flooring of plywood or
13 dunnage before you put the rugs on top of the tea?

14 A Yes, sir.

15 Q And that is absolute?

16 A That is expensive cargo. You have to put a
17 floor of dunnage or plywood.

18 MR. LASSOFF: Thank you. No further questions.

19 MR. KAIN: No questions.

20 THE COURT: You may step down.

21 Next witness.

22 (Witness excused.)

23 MR. LASSOFF: Has your Honor decided on that
24 exhibit that we offered? That is Dr. Mülle.

25 THE COURT: For the time being, yes, I have

sustained the objection.

MR. LASSOFF: Since I cannot get Dr. Mulle until tomorrow, your Honor, I will rest at this point.

MR. KAIN: Does your Honor wish us to reserve our motions?

THE COURT: No. We will excuse the jury. Take a short recess.

(Jury left the courtroom.)

THE COURT: With respect to the records of Dr. Mulle, may I see them, please, the exhibits.

Exhibit 4-A and 4-B for identification, there is no indication from these records whatsoever as to their source, who requested them to be sent, or any other such thing. All we have is a report dated November 11 -- 4-A is dated February 27, 1975 and the second one, 4-B, November 11, 1975. We don't know whether Dr. Mulle was a treating doctor. There is nothing with respect to these records in any way which I could say whether or not they might come within one of the exceptions set forth in Rule 803 of the Federal Rules of Evidence. All I have is a blank paper produced -- not a blank paper, but these papers without any explanation whatsoever.

Isn't that right, Mr. Lassoff?

MR. LASSOFF: That is true, your Honor, except

1 jh1k 90

2 these papers were taken from this official government file.
3 In fact, I took them from the file during the course of the
4 trial. They were sitting there. It is a part of an
5 official government file.

6 THE COURT: That doesn't mean anything because
7 the fact that it is part of a government file I would think
8 as to their accuracy and veracity and so forth would have
9 to come from Dr. Mulle's office, even if we were to con-
10 sider them for that reason. That is the way I see it. I
11 don't think they are admissible under these rules.

12 MR. LASSOFF: I freely concede, your Honor,
13 that Dr. Mulle would be better, but I can't get him until
14 tomorrow.

15 THE COURT: It is not a question as to whether
16 he would be better. First of all, I don't know that they
17 would be admissible in the first instance, even if you could
18 prove that they were accurate records kept by Dr. Mulle
19 and so forth. I don't think they come within -- I don't
20 know what subdivision of the rule you are offering them on.

21 MR. LASSOFF: Offhand I am not sure which one
22 myself, your Honor.

23 THE COURT: You don't have it in front of you,
24 but I don't want you to be put in that position just be-
25 cause you don't have it in front of you. There are two

1 jh1k 91

2 probable rules, 803(6) or 803(8). I don't want to put
3 you in that position. Here, Mr. Lassoﬀ. The only ones
4 on which they could come in would be under 803(6), of
5 which I have handed a copy to you -- have you read it?

6 MR. LASSOFF: I don't think --

7 THE COURT: It can't be 803(6) because you don't
8 have anybody from Dr. Mülle's office, isn't that correct?

9 MR. LASSOFF: Yes, your Honor.

10 THE COURT: The only other way would be 803(8),
11 which would be records, reports, statements or data,
12 compilations in any form of public offices or agencies.
13 That would be their own data, not data furnished to them
14 by Dr. Mülle.

15 MR. LASSOFF: You are right, your Honor.

16 THE COURT: Am I correct?

17 MR. LASSOFF: Yes.

18 THE COURT: All right. They are marked for
19 identification. Under the circumstances, if they were
20 admissible even under those rules, I would exclude them
21 under Rule 403, where there is no opportunity for the other
22 party here to cross-examine a report, and under 403 I
23 would exclude them in any event. But I think you have
24 conceded that they are not admissible, so that takes care
25 of that.

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1
2 MR. LASSOFF: I fully agreed, your Honor. As
3 I said, I intended to have Dr. Mulle here.

4 THE COURT: Would his testimony be cumulative
5 of the testimony we already have?

6 MR. LASSOFF: No, it is not, your Honor. It
7 deals with the injuries to the elbow, the hip and the
8 ankle, which have nothing whatsoever to do with the two
9 doctors I have produced.

10 THE COURT: All right. Let me suggest this:
11 Those injuries were a very minor aspect of this entire
12 case, were they not?

13 MR. LASSOFF: Not really, your Honor. My client
14 received an award of 45 per cent loss of use of the left
15 arm, that is what he received, plus 18 and 3/4 per cent of
16 the leg. That is where this big comp lien comes from.
17 That is \$40,000 of the comp lien. It is very vital to the
18 case. Dr. Mulle found 50 per cent of the arm and 45 per
19 cent of the leg. He actually received 45 per cent of that
20 arm, which is a serious injury.

21 THE COURT: It was my understanding or at least
22 I had thought from our discussions in this case and from
23 the way the case has been presented that his inability to
24 continue to work was because of his psychiatric condition.

25 MR. LASSOFF: Partially. It is both. Definitely

1 jhlk 93

2 the psychiatric condition is more, but since we are going
3 to be charged with a lien of some \$40,000 because of the
4 injuries to the arm and the leg it is vital to our case
5 to prove those injuries to the arm and leg, and as your
6 Honor knows, I can't bring Dr. Guarino because he won't
7 come because of certain things that have happened in the
8 last few months. I have called him. He refuses to go to
court because of that situation with the Waterfront
Commission. So I can't get it through Dr. Guarino. In
11 fact, I think he and a partner have disappeared pretty
12 much.

13 I can't object to your ruling. You are right
14 that I should have him available. It is just that he is
15 an old man and he lives in New Jersey and needs a private
16 car to get here. I called him at lunch yesterday and
17 begged him to come today and he said, "I can't leave my
18 wife at that time. I have to arrange for somebody to stay
19 with her and get a car to take me to New York." He said
20 he would be here tomorrow morning, 9:15, as a matter of
21 fact.

22 THE COURT: What do you have to put in?

23 MR. KAIN: I just want to note for the record,
24 your Honor, I don't have the award before me, but it is
25 my understanding, and I would like to note it on the record,

1 jh1k 94

2 that the amount awarded to this plaintiff was an agreement,
3 in other words, it was a settlement, it wasn't contested.
4 I don't purport to tell your Honor what would have been
5 the outcome if it was. I do know, for example, that
6 Dr. Holman found minimal orthopedic findings. But that
7 is in the realm of conjecture. I want your Honor just to
8 know on the record that this was a settlement rather than
9 a contest between the compensation carrier and the plaintiff
10 representative.

11 THE COURT: All right. Who do you plan to
12 put on this afternoon?

13 MR. KAIN: I plan to put on somebody from the
14 New York Shipping Association, if your Honor pleases, I
15 believe I will put on an investigator with respect to
16 whether or not he spoke to Mr. Green, if time permits I
17 may put on a ship's officer, and if further time permits,
18 I am prepared to go ahead with an expert.

19 THE COURT: Will you take up the balance of the
20 afternoon?

21 MR. KAIN: I can take up the balance of the
22 afternoon, your Honor.

23 THE COURT: If you will take up the balance
24 of the afternoon would you have any objection to going with
25 Dr. Mülle in the morning and letting Mr. Lassoff rest now

1 jh1k 95

2 except for the production of Dr. Mülle in the morning?

3 MR. KAIN: This creates a problem for me, if
4 your Honor please. I perhaps misunderstood counsel, but
5 I intended to go forward tomorrow with Dr. Kaplan at 9:30.

6 THE COURT: Let me suggest this: Dr. Mülle
7 is not going to be very long.

8 MR. LASSOFF: Ten minutes, your Honor.

9 THE COURT: You are not going to be long in
10 your cross-examination, as has been indicated by what you
11 have done before, and Dr. Kaplan could wait for a half
12 an hour.

13 MR. KAIN: That is true, your Honor.

14 THE COURT: Is that satisfactory to you?

15 MR. KAIN: Except, if your Honor please, I would
16 like to make my motions for the reason I stated --

17 THE COURT: Your motions are certainly going
18 to be made.

19 MR. KAIN: If your Honor is merely asking me
20 if Mr. Lassoﬀ may reserve his medical until tomorrow
21 morning, I don't intend to produce medical today, so I
22 wouldn't have any objection to that, as long as I may make
23 my motions prior to the end of his case.

24 THE COURT: Yes, sure. All that is reserved
25 now, as I understand it, is Dr. Mülle, who is merely a

1 jh1k 96

2 medical witness, and nothing on the liability issue.

3 MR. LASSOFF: Yes, sir.

4 MR. KAIN: I have no objection to extending
5 that courtesy to counsel.

6 THE COURT: We will do it then. As long as
7 we can take up the balance of the afternoon, I have no
8 objection.

9 MR. LASSOFF: Thank you very much.

10 THE COURT: Any motions?

11 MR. KAIN: Defendant moves to dismiss the
12 complaint on the grounds that plaintiff has failed to
13 establish negligence on the part of this defendant in that
14 the plaintiff has failed to prove any duty to supervise
15 or any obligation on the part of the ship's officers to
16 oversee the loading in India of this cargo, specifically
17 the cargo in the #6 hatch, and on the further ground that
18 plaintiff has failed to establish either actual or con-
19 structive notice of this condition prior to plaintiff's
20 accident.

21 While it is true, if I recall the testimony
22 correctly, that Mr. Greentestified that there was an
23 officer in the hatch when the accident occurred, aside from
24 the fact that this is contradicted by plaintiff's own
25 testimony, nevertheless, I submit to your Honor that the

1 jhlk 97

2 occurrence of the accident is not actual notice to this
3 ship's officer, assuming he was there, the chief officer,
4 assuming he was there, since plaintiff and the witness
5 who both claim to have been working in the area say they
6 had no notice of it and no knowledge of it until the
7 occurrence of the accident. So I submit to your Honor
8 that there is no evidence that prior to this accident
9 this defendant acting through the ship's officers, crew
10 members or agents had any notice, either actual or con-
11 structive, of the alleged defect in the stowage, and I
12 further wish to contend on the record, if your Honor please,
13 that in the absence of notice, either actual or constructive,
14 and the proof of same, the plaintiff has failed to meet
15 his burden of showing negligence on the part of the de-
16 fendant shipowner.

17 THE COURT: All right. I will reserve decision.

18 I think I have to correct something that I re-
19 flected on over the luncheon recess. In referring to the
20 Napoli case I indicated that I would charge 343(a), the
21 restatement, but that refers really to an obvious danger.
22 We do not have an obvious danger here. So I don't think that
23 the Napoli case is applicable in respect to that.

24 You agree, Mr. Lassoff?

25 MR. LASSOFF: Yes, your Honor. What I wanted

1 jh1k 98

2 from you was Judge Weinfeld's charge on a latent defect,
3 hidden trap. Now that you mention it, Napoli clearly
4 only applies to obvious.

5 THE COURT: Yes. I reflected on it at lunch
6 time and see that it does not apply.

7 All right. I have reserved decision on your
8 motion. Why don't we get the jury back in and proceed.

9 MR. KAIN: Does your Honor want me to put a
10 witness on first?

11 THE COURT: Yes. Have you had a chance to
12 read Judge Weinfeld's charge?

13 MR. KAIN: I did read it, yes, your Honor.
14 It seems to me, one, your Honor, that we are not discussing--
15 in other words, it is distinguishable in this case.

16 THE COURT: Let me do this. Maybe after we
17 finish we will go over the charge and see what you would
18 agree on with respect to that that I should charge and
19 shouldn't charge.

20 MR. KAIN: All right.

21 THE COURT: All right. Jury in.

22 (Jury present.)

23 THE COURT: Members of the jury, the plaintiff
24 has rested his case, which means he has completed his
25 direct testimony, with the exception of one doctor, and the

1 jhlk 99 DeSchino - Direct

2 defendant has agreed to go ahead with his case and will
3 take up the balance of the afternoon and the other doctor
4 will be available in the morning. But we are now on the
5 defendant's portion of the case.

6 MR. KAIN: If your Honor please, Mr. DeSchino
7 is on the stand.

8 S A L V A T O R E D e S C H I N O, called as a witness
9 on behalf of the defendant, having first been duly
10 sworn, was examined and testified as follows:

11 THE COURT: Proceed.

12 DIRECT EXAMINATION

xxxx 13 BY MR. KAIN:

14 Q Mr. DeSchino, by whom are you presently employed?

15 A General Claims Investigations.

16 Q What is the nature of the work done by General
17 Claims Investigations?

18 A Insurance investigations, compensation cases,
19 et cetera.

20 Q Is it part of the work done by your employer
21 to investigate the occurrence of accidents?

22 A Yes, sir.

23 Q Were you or your employer requested to make an
24 investigation of an accident involving a Mr. Ruffino
25 which occurred on January 29, 1974?

1 jhlk 100 DeSchino - Direct

2 A That's correct.

3 Q When was this request made, approximately, if
4 you know?

5 A Approximately, I would say March of '74, sir,
6 in that area.

7 Q And by whom were you requested to make this
8 investigation?

9 A The law offices of Freehill, Hogan and Mahar.

10 Q Did you make such an investigation?

11 A Yes, I did.

12 Q In the course of this investigation did you
13 talk to or interview a Mr. Joseph Green?

14 A Yes, I did.

15 Q Could you tell me the circumstances under which
16 you talked to Mr. Green, where it was, when it was?

17 A I don't recall the exact date, but it was
18 sometime in January of this year, sir, and I recall it was
19 on a ship at 21st Street pier in Brooklyn. I contacted
20 him aboard the vessel sometime during the morning hours.

21 Q If you know, when you contacted him aboard
22 this vessel for whom was he working?

23 A ITO Stevedoring, sir.

24 Q Was he actually working as a longshoreman at
25 that time?

1 jhlk 101 DeSchino - Direct

2 A Yes, he was.

3 Q Did you talk to him aboard the vessel?

4 A Yes, I did.

5 Q Where aboard the vessel did you talk to him?

6 A I contacted him working in the lower hold.
7 I believe they were working on coffee. I took him up to
8 the mess hall of the vessel. I sat him down and we con-
9 ducted our investigation.

10 Q For how long a period of time did you talk to
11 Mr. Green, approximately, if you recall.

12 A I would say 15, 20 minutes.

13 Q And did you discuss with Mr. Green at that time
14 Mr. Ruffino's claim of an accident?

15 A Yes, we did.

16 Q And did you at some point in your talk or your
17 discussion with Mr. Green write down what Mr. Green told
18 you?

19 A Yes, I did.

20 Q After you had reduced this to writing did Mr.
21 Green read it?

22 A Yes, he did.

23 Q Did he sign it?

24 A No, he did not, sir.

25 Q Did you request him to sign it?

1 jhlk 102 DeSchino - Direct

2 A I only asked him to sign it. I did not
3 demand or anything. I only asked him.

4 Q And he refused to do so?

5 A Yes, sir.

6 Q Do you have with you the statement which you
7 wrote down which Mr. Green refused to sign?

8 A Yes, I do.

9 Q Will you let me see it, please.

10 These three pages?

11 A Yes, that's correct.

12 MR. KAIN: May we mark them for identification,
13 if your Honor please.

14 THE COURT: Yes.

XXXX

15 (Defendant's Exhibit C marked for
16 identification.)

17 Q Mr. DeSchino, do you at this time have an
18 independent recollection -- by independent recollection I
19 mean without referring to anything, any notes or the state-
20 ment itself -- of what Mr. Green told you?

21 A Well, from what I can recall, sir --

22 MR. LASSOFF: If your Honor please, the question
23 calls for a yes or no answer.

24 THE COURT: Do you have an independent recollec-
25 tion now of what he told you?

1 jh1k 103 DeSchino - Direct

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2 THE WITNESS: Yes.

3 BY MR. KAIN:

4 Q Would you tell me what he told you about the
5 occurrence of this accident?

6 A Well, he told me he was working as a holdman
7 in the same gang as the claimant.

8 Q That's Mr. Ruffino, when you say the claimant?

9 A Mr. Ruffino. And he told me that the gang
10 was discharging bales of rugs, I believe they were, and
11 approximately 10:30 in the morning he had been working and
12 he saw Mr. Ruffino fall into a separation of plywood be-
13 tween the bales of some sort.

14 Q Did he tell you that there was plywood dunnage
15 between the rugs?

16 A Yes, he did.

17 Q And what else?

18 A There had been plywood laid down as a separation
19 of the cargo and also a cargo floor.

20 Q Did he tell you that he and --

21 MR. LASSOFF: If your Honor please --

22 THE COURT: Yes.

23 Q What else did he tell you?

24 A He told me that the man fell into this separation
25 and was yelling in pain. He couldn't recall if he had been

jhlk 104

DeSchino - Direct/Cross

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bleeding or unconscious at the time. He believes that he was taken out on a pallet with the winches, the ship's winches.

Q That Mr. Ruffino was taken out of the hatch on a pallet?

A Yes, he was. I believe he said he was assisted by a couple of other workers in the hold, placed upon a pallet and removed from the hatch.

Q Do you recall anything else that he told you?

A No, I cannot at this time, sir.

Q Before you came to court today did you read this unsigned statement which is Defendant's Exhibit C for identification?

A Yes, I did, sir.

MR. KAIN: No further questions.

MR. LASSOFF: May I see that, please?

CROSS-EXAMINATION

BY MR. LASSOFF:

Q I don't know if I heard you correctly, sir, but did I hear you say that you were retained in March of 1974 to investigate this accident?

A On or about, sir. I don't recall the date.

Q Between March of 1974 and January of 1976 you did nothing to investigate this accident?

jhlk 105

DeSchino - Cross

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A There were numerous occasions where we tried to contact Mr. Ruffino at home and he wasn't found at home.

Q You tried to contact Mr. Ruffino?

A Yes, I did.

Q You knew at that time Mr. Ruffino had a lawyer, did you not?

A No, I did not.

Q You were retained by the firm of Freehill, Hogan and Mahar, were you not?

A Yes, I was.

Q And they didn't tell you that he had a lawyer?

A No, sir.

Q Can you tell me, sir, how can you fall through plywood?

A Well, from experience or just from common sense, sir? I don't know exactly --

MR. KAIN: If your Honor please, I have an objection to that.

THE COURT: Sustained.

Q You did say that Mr. Green told you that this man fell through plywood, did you not?

A He stated a separation in the plywood, sir.

Q A separation made of plywood. What did that

jhlk 106

DeSchino - Cross

280

mean to you?

THE COURT: No, separation in the plywood.

Q What did that mean to you?

A It meant to me that bales or plywood had been moved, causing spaces in the cargo that had been stowed in the hatch.

Q Did you ask him whether that had been done?

A Yes, sir.

Q What did he tell you?

A He said that the longshoremen had been discharging these bales of various sizes and weights and moving them around throughout the hatch, working from the square of the hatch out, causing separations in the cargo floor and the bales.

Q Did he tell you how big the space was that Mr. Ruffino fell into?

A I don't recall, sir.

Q Would you have recorded it if you were told?

A Yes.

Q Did you ask Mr. Green that question?

A I may have asked him. He might not --

Q Would it be important for you to ask that question?

A I imagine it would be, yes, sir.

1 jhlk 107 DeSchino - Cross

281

2 Q I show you this three-page document that you
3 say you asked Mr. Green about and show me anywhere in this
4 document where it shows you asked Mr. Green the question
5 or you commented on it.

6 A Well, this --

7 Q Take your time and look at it.

8 A Okay. It doesn't state how big the separation
9 was.

10 Q And that would have been important to you, would
11 it not?

12 A Yes, I -- I can tell you one thing though.

13 Q Just tell me whether it would have been important
14 yes or no.

15 A Yes.

16 Q But it is not recorded?

17 A No.

18 Q Did you record anywhere in that, what you say
19 you got from Mr. Green, how far Mr. Ruffino fell?

20 A If it is recorded --

21 Q Just yes or no. Look at it and tell me.

22 A No, it does not.

23 Q Would it have been important to you to know
24 how far Mr. Ruffino fell?

25 A Yes.

jhlk 108

DeSchino - Cross

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Q But you didn't ask the question and you didn't record any answer?

A I did ask the question.

Q Where is the answer?

A Mr. Green did not know.

Q Mr. Green did not know?

A Yes.

Q Did he tell you where he was when this accident happened?

A He stated that he had been working in the hatch, sir.

Q In that statement in your handwriting, when you said that there is no answer, does it say there that you asked the question of Mr. Green and he said he did not know?

A No, sir.

Q It doesn't say that either?

A Not in the statement.

Q Did he tell you what was underneath the rugs?
Just yes or no.

A Yes.

Q What did he tell you?

A Plywood.

Q Did he tell you what was underneath the plywood?

jhlk 109

DeSchino - Cross

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2

A No, he did not.

3

Q Did you ask him?

4

A Yes.

5

Q Did he know?

6

A No.

7

Q He didn't know what was underneath the plywood?

8

A No, sir.

9

10

Q Did he tell you where in the hatch this accident happened?

11

12

13

A To the best of his recollection, I believe it was somewhere in the square or around the square. That is all he can recall.

14

Q Did he tell you what hatch it happened in?

15

A He believed it was #4 hatch.

16

17

Q Are you experienced in safety procedures on the waterfront?

18

A I believe I am, sir.

19

20

Q Would it be important to have a solid floor underneath a cargo of rugs?

21

22

MR. KAIN: If your Honor please, I object to this.

23

24

THE COURT: Yes. But you may pursue it.
Sustained.

25

Q In the course of your investigating these

jhlk 110

DeSchino - Cross

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accidents is it necessary for you to know safety and health standards to be used in the shipping and stevedoring industry for the ongoing of work such as discharging of vessels?

A I would say yes.

Q Are you familiar with those standards?

A Familiar with some, yes.

MR. KAIN: If your Honor please --

MR. LASSOFF: If your Honor please, he qualified this man --

THE COURT: Go ahead. That is what you are trying to do.

Q With regard to safety, should there have been a solid flooring for these men to work?

MR. KAIN: Objection, your Honor.

THE COURT: Sustained.

Q Did you interview anybody besides Mr. Green?

A Yes, I did.

Q Who else did you interview?

A Numerous regular men in Mr. Saverese's gang.

Q In the course of your investigation did you obtain the superintendent's report of accident?

A I did retain a copy of the accident report from Pittston Stevedoring, I believe it was, sir.

jhlk 111

DeSchino - Cross

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Q Incidentally, when you saw Mr. Green in January of 1976 were you working for the firm of Freehill, Hogan and Mahar or for the firm of Haight, Gardner, Poor and Havens?

A Freehill, Hogan and Mahar.

Q Who asked you to see Mr. Green at that time?

A Well, I had interviewed the subject, Mr. Ruffino, and he had told me that there had been a witness by the name of Green.

Q When did you interview the subject?

A July of '75, sir.

Q At that time did you know he had a lawyer?

A No, I didn't.

Q You still didn't know he had a lawyer.

In your file did you make a report of your investigation in total to Freehill, Hogan and Mahar?

A Yes, I did.

MR. LASSOFF: May we have a stipulation from you, Mr. Kain, that Freehill Hogan and Mahar are a firm of attorneys who also represent the shipowner.

MR. KAIN: No, I won't stipulate, your Honor. To my knowledge, they do not.

THE COURT: Very well.

MR. LASSOFF: May we have a stipulation that this

1 jhlk 112

DeSchino - Cross

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2 case was sent to you by Freehill, Hogan and Mahar for
3 defense?

4 MR. KAIN: I will so stipulate. I don't think
5 it is relevant.

6 Q May I see your complete investigative file,
7 please? Is this all for this case?

8 A Yes, it is. I have various progress reports.
9 That is the reason why the time has elapsed from '74 to
10 '76.

11 Q All right. I am willing to read them.

12 A This is a letter from Freehill, Hogan request-
13 ing the investigation. These are follow-up memos. These
14 are my corresponding reports.

15 Q Could I see them, please?

16 A Yes.

17 Q Are those different?

18 A These are the memos, follow-up memos. This is
19 a copy of the statement.

20 Q I ask you whether or not you obtained a copy
21 of the foreman's report of accident.

22 A What foreman do you mean, sir?

23 Q The stevedore foreman.

24 A Later on through the mail I believe we did
25 receive one.

jhlk 113

DeSchino - Cross

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Q Do you have a copy of that in your file?

A Yes, sir. I believe you might have it attached to my report.

Q I have certain documents attached to your report. I will ask you specifically --

A That is it right there.

Q That is the employer's report of accident, that is not the foreman's report of accident. Do you have the foreman's report of accident as well?

A No, I don't.

Q You didn't obtain that from the stevedore?

A This came from Pittston Stevedoring.

THE COURT: We are referring to a lot of this' and thats' and not having them marked.

MR. LASSOFF: Yes, sir. Would you mark this as a plaintiff's exhibit?

(Plaintiff's Exhibit 5 marked for identification.)

BY MR. LASSOFF:

Q Incidentally, in accordance with your instruction from Freehill, Hogan and Mahar in this case did you have Mr. Ruffino under surveillance?

A To my knowledge, yes.

Q Would you tell the jury what surveillance means?

xxxx

1 jhlk 114

DeSchino - Cross

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2 A Surveillance means to check the daily activity
3 of Mr. Ruffino.

4 Q Am I correct in stating that during the period
5 of time that you had Mr. Ruffino under surveillance that
6 he was found not to be actively employed?

7 A Well, I did not handle the surveillance end,
8 sir. Only from what I can read from the reports. He
9 wasn't gainfully employed.

10 Q I show you this report of October 26, 1975, to
11 Freehill, Hogan and Mahar, and I ask you to take a look at
12 it and tell me if that is what it shows.

13 A This is a memorandum received by my office
14 from Freehill, Hogan.

15 Q Does it go into surveillance?

16 A It mentions surveillance, yes, it does.

17 Q Why did Mr. Green refuse to sign the three
18 pages you wrote up?

19 A He stated it was his policy never to sign
20 anything. Also that the time that had elapsed, he said
21 that he just didn't want to get involved.

22 Q Did he tell you that his recollection of the
23 facts was not too clear?

24 A Well, I refreshed his memory by reading off the
25 details from the accident report and he seemed to recall

1 jhlk 115 DeSchino - Cross

2 the incident.

3 Q You refreshed his memory from what accident
4 report?

5 A The accident report you just had labeled.

6 Q Can you tell me what in this Plaintiff's
7 Exhibit 5 for identification you refreshed his memory with?

8 A The man's name, the date, the name of the
9 ship, where it happened and what the employee claims, that
10 he fell on a bale of rugs.

11 Q Fell on or off?

12 A Fell from bale of rugs. I am sorry. And he
13 was a casual worker also.

14 Q Now sir, Mr. Joseph Green is still a longshore-
15 man, is that correct?

16 A As of January '76 he was, sir.

17 Q As of that time it would be possible for you
18 to obtain his address from the Waterfront Commission of the
19 State of New York?

20 A That is correct.

21 Q By just giving his Social Security number, is
22 that correct?

23 A Or his waterfront number, yes.

24 Q And yet nonetheless, you never saw Mr. Green
25 until January of 1976?

jhlk 116

DeSchino - Cross

290

1
2 A Yes, that was --

3 Q Just yes or no.

4 A Yes.

5 MR. LASSOFF: No further questions.

6 MR. KAIN: No questions, your Honor.

7 THE COURT: All right. You may step down.

8 Next witness.

9 (Witness excused.)

10 MR. LASSOFF: May I offer this in evidence
11 now, your Honor?

12 MR. KAIN: I object to certain portions of it,
13 your Honor.

14 THE COURT: May I see it?

15 MR. KAIN: Specifically, the left lower corner.

16 THE COURT: Is there any objection to the ex-
17 cision of the part in the lower left corner?

18 MR. LASSOFF: I have no objection.

19 MR. KAIN: I have no objection.

20 THE COURT: Then you are agreed that everything go
21 in except the lower left-hand corner, is that correct?

22 MR. KAIN: The lower portion of it, yes.

23 THE COURT: All right. We will find some way --

24 MR. KAIN: May I offer in evidence the unsigned
25 statement about which this witness testified?

1 jh1k 117

Clark - Direct

2 MR. LASSOFF: Objection, your Honor.

3 THE COURT: Sustained.

4 (Plaintiff's Exhibit 5 received in

5 evidence.)

6 G E O R G E J. C L A R K, JR., called as a
7 witness on behalf of the defendant, having first
8 been duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. KAIN:

12 Q Mr. Clark, what is your present employment?

13 A I am with New York Shipping Association.

14 Q In what capacity are you employed by New York
15 Shipping Association?

16 A I am coordinator of seniority for New York
17 Shipping Association.

18 Q Are you here pursuant to a subpoena?

19 A Yes, sir.

20 Q Did you also bring with you, Mr. Clark, records
21 of the New York Shipping Association - ILA Pension Fund,
22 which were also subpoenaed?

23 A Yes, I did.

24 Q Would you tell me, Mr. Clark, what is GAI?

25 A It means guaranteed annual income. It was

1 jhlk

Rao - Direct

313

2 MR. KAIN: I think so, your Honor. It is a
3 ship's officer.

4 THE COURT: All right. Why don't we take our mi
5 afternoon recess.

6 Don't discuss the case. We will take a ten-
7 minute recess.

8 (Recess.)

9 (In open court; jury present.)

10 U. K. B. R A O, called as a witness on behalf of
11 the defendant, having first been duly sworn, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. KAIN:

15 Q Mr. Rao, what is your present employment?

16 A Pardon me, sir?

17 Q What is your present job?

18 A I am a merchant navy officer working for
19 Scindia Steam Navigation Company, Ltd., Bombay, and working
20 as a chief officer at the moment.

21 Q At the moment you are a chief officer?

22 A Yes, sir.

23 Q Could you tell me, Mr. Rao, what is your
24 native language?

25 A My native language is Hindis.

xxxx

- 1

jhlk

Rao - Direct

314

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Q English is a secondary language?

3

A Yes, sir.

4

Q Could you tell me what education did you have to become a merchant navy officer?

6

A Well, I graduated from school, I finished

7

first year science, that is, after eleven years at school

8

I put in two years in college and the first year science,

9

and then after that I joined a training ship, the DUFFERIN,

10

worked as an apprentice for two years, and after that came

11

out to sea, worked as an apprentice for another two-and-a-

12

half years, and after that I got my second mate's foreign

13

going certificate, and after that first mate's foreign

14

going certificate, and at the moment I am holding a government

15

of India certificate of competency as a master of foreign going

16

ships.

17

Q Do you presently hold a master's license?

18

A Yes, sir.

19

Q And is that a license issued by the government

20

of India?

21

A Yes, sir.

22

Q Is it an unlimited license, captain? I mean by that

23

a license to command any ship of any tonnage in any oceans

24

anywhere in the world?

25

A Yes, sir.

Q How long have you been going to sea?

jhlk

Rao - Direct

315

1

A The last eleven years, sir.

3

Q How long have you held any form of a license?

4

When did you get your first license, how long ago?

5

A In 1968. Eight years now, sir.

6

Q How long have you held a master's license?

7

A For three years, sir, since 1973.

8

Q Are you presently employed aboard a ship?

9

A Presently, no, sir.

10

Q Do you expect to join one?

11

A Yes, sir.

12

Q Shortly?

13

A On or about the 15th or 16th of this month, sir.

14

Q In January of 1974 what was your employment,

15

what job did you have?

16

A I was a chief officer on a ship.

17

Q What ship were you a chief officer of?

18

A On the JALAJYOTI.

19

Q When did you join the JALAJYOTI?

20

A I joined the JALAJYOTI on October 1973.

21

Q Do you remember approximately when you left the

22

JALAJYOTI?

23

A It was February '75, sir, February 1975.

24

Q Did you come to New York to testify in this

25

case, captain?

jhlk

Rao - Direct

316

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2

A Yes, sir.

3

Q Where did you come to New York from?

4

A I came from Bombay, sir.

5

Q Bombay?

6

A Yes, sir.

7

Q You were chief officer on the JALAJYOTI on

8

January 29, 1974?

9

A Yes, sir.

10

Q Captain, will you look at this book, examine it, and tell me if you can what it is, please.

11

12

A This is the ship's logbook, sir, kept on board the ship.

13

14

Q Of what ship?

15

A Of the JALAJYOTI, sir.

16

Q What dates does it cover? What is the first date and what is the last date, captain?

17

18

A From 1st January 1974 to 31st January 1974. sir.

19

20

Q Will you speak a little slower, captain, see if you can keep your voice up.

21

22

In whose handwriting is that logbook, captain?

23

A This is the third officer's handwriting, sir.

24

25

Q Is that logbook a logbook kept in the deck department of the ship or in the engineering department or

jhlk

Rao - Direct

317

some other department?

A No, sir, in the deck department.

Q Is the entire logbook in the third officer's handwriting?

A Yes, sir.

Q Could you tell me what the procedure was aboard the JALAJYOTI in keeping that log? How was it made up?

A Well, this is actually a fair logbook in the sense that this is taken off from a rough logbook which we maintain on the ship. It is a copy of the rough logbook, sir.

Q Made by the third officer?

A Made by the third officer.

Q How often is the rough log transcribed into that log?

A Daily, sir, transcribed daily.

Q Did some officer aboard the ship have the duty or the obligation to check and see if the third officer transcribed it daily and that transcription was accurate?

A Yes, sir. I used to check it.

Q Did you check it daily?

A Yes, sir, I checked it daily, every evening, sir.

jhlk

Rao - Direct

318

1

2

A What language is that logbook in, captain?

3

A It is in English.

4

5

6

Q Is that logbook a record which the ship is required to keep, the JALAJYOTI was required to keep in the regular course of the ship's business?

7

A Yes, sir.

8

MR. KAIN: I offer it in evidence.

9

MR. LASSOFF: No objection.

10

THE COURT: Received in evidence.

xxxx

11

(Defendant's Exhibit F received in

12

evidence.)

13

14

15

Q Incidentally, captain, during the entire period you were employed aboard the JALAJYOTI were you employed as chief officer during that entire time?

16

A Yes, sir.

17

18

19

Q Was that the only period, the one you just referred to a few moments ago, the only time you were employed on the JALAJYOTI?

20

A Yes.

21

22

Q Captain, will you look at this document and tell me if you can what it is.

23

A This is the cargo stowage plan of the JALAJYOTI.

24

Q For what voyage, captain?

25

A For voyage #16 westbound, sir.

jh1k

Rao - Direct

319

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Q Does that voyage include January 29, 1974?

3

A Yes, sir.

4

Q Could you tell me, captain, who made that cargo

5

stowage plan?

6

A I made this plan, sir.

7

Q Is it in your handwriting?

8

A Yes, sir.

9

Q Could you tell me, captain, when you made it?

10

A I made this after departure from Calcutta --
that was the last loading port in India, sir -- and it was
sent from Colombo, Ceylon.

13

Q To whom was it sent, if you know?

14

A This was -- one copy of the plan was sent to
our agents in New York, United States Navigation Incorporated.

17

Q If you know, is that plan distributed to your
agents in the various loading ports in the United States?

18

19

A Yes, sir, and along with the plan was an
accompanying letter requesting them to make photostat
copies and send to discharging ports.

20

21

22

Q Does that plan show the location, tonnage and
the nature of the cargo aboard the JALAJYOTI when she sailed
from Calcutta for the continental United States?

23

24

25

A Yes, sir.

jhlk

Rao - Direct

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Q Is that plan a record which the ship is required to keep in the regular course of the ship's business?

THE COURT: Any objection?

MR. LASSOFF: If I may see it, your Honor. I probably don't have any.

THE COURT: Very well. Show it to him.

MR. KAIN: May I have an answer to that question?

THE COURT: Yes.

A Yes, sir.

Q It is a plan which you are required to keep in the regular course of the ship's business?

A Yes.

MR. LASSOFF: No objection, your Honor.

THE COURT: Received in evidence.

(Defendant's Exhibit G received in evidence.)

Q Captain, will you look at this document, open it and examine it and tell me if you can what it is.

Q Yes, sir. This is a capacity plan of the JALAJYOTI, sir.

Q Does that plan, captain, show the capacities, deck arrangements, hatch arrangements and cargo gear of the M/V JALAJYOTI as it existed on January 29, 1974?

A Yes, sir, except for a crane which is not shown

1 jh1k

2 here.

3 Q You are indicating where, between the #2 and
4 #3 hatches?

5 A Yes, sir. That was installed later, after
6 this plan.

7 Q Except for the crane that you have just re-
8 ferred to between #2 and #3 hatches on that plan, does it
9 in all other respects show the arrangement, the capacity,
10 height and location of cargo gear aboard the M/V JALANYOTI
11 as it existed on January 29, 1974?

12 A Yes, sir.

13 MR. KAJN: I offer it in evidence.

14 MR. LASSOFF: May I see it, your Honor? I
15 asked to see these documents at lunch, your Honor.

16 THE COURT: No problem. He will let you see
17 them.

18 MR. LASSOFF: No objection.

19 THE COURT: Received in evidence.

20 (Defendant's Exhibit H received in

21 evidence.)

22 BY MR. KAJN:

23 Q Captain, will you look at this document and tell
24 me if you can what it is.

25 A Yes, sir. This is a measurement plan, sir,

1 jhlk Rao - Direct 322

2 showing the cubic capacity of each of the compartments
3 and every section in each compartment.

4 Q Do the measurements, cubic, linear and otherwise,
5 shown on that plan, captain, reflect or do they show the
6 same arrangements, conditions and measurements as existed
7 on board the M/V JALAJYOTI on January 29, 1974?

8 A Yes, sir.

9 Q Have you or did you while you were chief
10 officer of that vessel have occasion to work with this plan
11 in connection with your duties?

12 A Yes, sir.

13 MR. KAIN: I offer it in evidence, if your Honor
14 please.

15 MR. LASSOFF: No objection.

16 THE COURT: Received in evidence.

xxxx 17 (Defendant's Exhibit I received in
18 evidence.)

19 Q Will you, captain, referring to your logbook
20 as necessary, tell me when in January of 1974 the JALAJYOTI
21 arrived in the port of New York.

22 A We arrived on the 28th of January, 1974.

23 Q At what time of day, captain?

24 A It was in the morning, at 7:36.

25 Q 7:36 in the morning?

jhlk

Rao - Direct

323

1 jhlk
2 A Yes, sir.

3 Q Did you go alongside a pier?

4 A Yes, sir.

5 Q What pier?

6 A Pier 12 Atlantic Basin.

7 Q Atlantic Basin, Brooklyn?

8 A Yes, sir.

9 Q 0746, the time you gave us, is that when you
10 were alongside finished with engines?

11 A Yes, sir, 36.

12 Q 0736. What day of the week was that, captain?

13 A That was Monday, sir.

14 Q A Monday?

15 A Yes, sir.

16 Q Was there any cargo work done aboard the
17 JALAJYOTI on January 28, 1974?

18 A Yes, sir.

19 Q When did the cargo work start aboard the ship
20 that day?

21 A At 8:25 in the morning, sir.

22 Q 8:25 a.m.?

23 A Yes, sir.

24 Q How many gangs of longshoremen were aboard at
25 8:25 a.m.?

1 jhlk

Rao - Direct

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2 A Three gangs in all, sir.

3 Q What hatches were being worked at 8:25 a.m.,
4 captain?

5 A One hatch, sir, #5. The first hatch was #5.

6 Q You said three gangs on board. Did they all
7 start working at 8:25?

8 A No, sir.

9 Q The first gang stated work in #5 hatch at 8:25?

10 A Yes, sir.

11 Q How about the other two gangs, where did they
12 work?13 A The second gang worked -- they started work
14 at 8:45, #1, sir.

15 Q #1 hatch?

16 A Yes, sir.

17 Q How about the third gang?

18 A The third gang worked at 10:55, sir, at #4.

19 Q #4 hatch?

20 A Yes.

21 Q Was this work done by these three gangs of
22 longshoremen loading or discharging cargo, captain?

23 A It was discharging cargo, sir.

24 Q From hatches 1, 4 and 5?

25 A Yes, sir.

jhlk

Rao - Direct

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Q Does your logbook indicate how long these gangs continued to work aboard the ship? I am speaking now on the 28th of January, 1974.

A Yes, sir. They worked until 11:45, sir.

Q Did they go ashore at that time?

A Yes, sir.

Q Did they come back in the afternoon?

A No, sir, they didn't come back.

Q Was there any cargo worked on the afternoon of January 28, 1975?

A No, sir.

Q Was there a particular reason for that?

A Yes, sir. There was no cargo work owing to non-availability and difficulty in procuring cargo manifests.

Q Cargo manifests?

A Yes.

Q They hadn't been filed with the Customs House?

A No, sir.

Q Was there a reason for that, captain?

A Yes, sir. That was on account of the cargo manifests not forwarded to New York agents on account of fire in the Calcutta office.

Q How about January 29, the following day, captain? Was there cargo worked aboard the ship that day?

1 jh1k

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2 A Yes, sir.

3 Q With respect to #6 hatch, could you tell me
4 when -- assuming #6 hatch was worked -- when the longshore-
5 men came on board to work hatch #6 of the vessel?

6 A They came on board at 8:00 o'clock in the morning,
7 8:00 a.m., and they started immediately thereafter, sir.

8 Q They started work in #6?

9 A Yes, sir, #6 hatch.

10 Q After they started at 8:00 a.m. for how long
11 did they continue to work in #6 hatch?

12 A Until 9:00, sir, from 8:00 to 9:00 they were
13 working.

14 Q 8:00 to 9:00?

15 A Yes, sir.

16 Q When you say 8:00 to 9:00 do you mean 8:00
17 in the morning to 9:00 in the morning or 8:00 to 9:00 in
18 the evening?

19 A 8:00 to 9:00 in the morning.

20 Q Did they stop work at #6 then?

21 A Yes, sir, they stopped, and then after that --

22 Q When did they resume, if they did?

23 A I am sorry, sir. They worked between 8:00 and
24 8:30, the #6 hatch.

25 Q Were they rigging the hatch or does it indicate?

1 jhlk

Rao - Direct

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2 A No, sir. They rigged the hatch and then they
3 discharged, they commenced discharging at 8:00 o'clock,
4 sir.

5 Q In the morning?

6 A Yes, sir.

7 Q And they worked until when?

8 A Until 8:30 and from 8:30 till 9:00 they were
9 shifting dunnage.

10 Q Shifting dunnage?

11 A Yes, sir.

12 Q That was in #6 hatch they were shifting dunnage?

13 A Yes, sir.

14 Q When did they resume discharge of cargo, if
15 your logbook indicates?

16 A At 9:00, sir, 9:00 a.m. in the morning.

17 Q How long thereafter did they continue to dis-
18 charge #6 hatch?

19 A Until 11:45, sir.

20 Q Is that when they went ashore for the noon --

21 A For meal, yes, sir.

22 Q When did they resume, if they did, after the
23 noon meal?

24 A At 1300 hours, sir.

25 Q 1300 hours, that is 1:00 p.m. in shore time?

1 jhlk

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2 A Yes, sir.

3 Q How long did they continue to work after 1:00
4 p.m., #6 hatch?

5 A Until 1645, sir. That was the end of the shift.

6 Q Shore time, that is 4:45, quarter of five?

7 A Yes, sir.

8 Q Did they then knock off for the day in #6 hatch?

9 A Yes, sir.

10 Q Captain, will you look at the cargo stowage
11 plan, which is Defendant's Exhibit G in evidence. I direct
12 your attention, captain, specifically to the #6 hatch on
13 that cargo stowage plan.14 First of all, captain, would you tell me how
15 many deck levels were in #6 hatch of the JALAJYOTI?16 A There were two compartments, the lower hold
17 and the 'tween deck.

18 Q You had just one 'tween deck and a lower hold?

19 A And a lower hold.

20 Q There wasn't an upper 'tween deck and a lower
21 'tween deck and then a hold, you had just the two levels?

22 A Yes, sir.

23 Q Could you tell me where the cargo booms for
24 the vessel were located, at which end of the #6 hatch?
25 Were they at the forward end or the after end or at both

1 jh1k

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2 ends?

3 A At the forward end.

4 Q Did you have more than one set or one pair of
5 cargo booms at #6 hatch?

6 A Just one.

7 Q Could you tell me what size booms they were?
8 What was their capacity?

9 A They were five ton safe working load.

10 Q Captain, would you go back to your cargo stowage
11 plan, Defendant's Exhibit G in evidence. Would you tell
12 me, referring to the #6 'tween deck, what cargo as indicated
13 on that plan was stowed in the #6 'tween deck that was con-
14 signed to the port of New York?

15 A #6 'tween deck, in the fore part, there was
16 general cargo, like condiments and pickles, curry powder,
17 small tools, skins and hides, peacock feathers, handloomed
18 fabrics, handicrafts, tires, electronic valves, silk
19 material, country drugs, wheel structures, cotton piece
20 goods, cricket matting, tube analyzer, connector, and then
21 tea, palletized, woolen carpets.

22 Q If we can for a moment, captain, if we can
23 consider this room to be the 'tween deck of this ship, the
24 JALAJYOTI, on this particular date, and will you assume
25 with me that the wall behind where you are sitting is the

1 jhlk

2 forward end, is that where these condiments, this curry
3 powder and such that you read off --

4 A Yes, sir.

5 Q Were they stowed against the forward bulkhead
6 of the forward wall of the 'tween deck?

7 A Yes, sir.

8 Q Were they stowed from one side of the hatch
9 to the other side of the hatch?

10 A Yes, sir, from wing to wing.

11 Q You know what I mean, don't you, captain, by
12 the square of the hatch?

13 A Yes, sir.

14 Q That is the part under --

15 A The coaming.

16 Q -- the opening, the cargo goes out, comes in?

17 A Yes, sir.

18 Q What cargo did you have in the square of the
19 hatch? Were these condiments that you just mentioned in
20 the square of the hatch?

21 A No, sir.

22 Q They were forward of the square?

23 A Forward of the square, sir.

24 Q In under the upper deck?

25 A Yes, sir.

1 jhlk

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2 Q Would you tell me now what was in the square
3 of the hatch?

4 A In the square of the hatch, in the fore
5 part of the coaming, there were a few skids of tea and
6 woolen carpets.

7 Q Woolen carpets. Was there any other cargo
8 in the fore part of the square of the hatch?

9 A No, sir.

10 Q I think you just used an expression, the fore
11 part of the coaming. Is that what you said?

12 A Fore part of the square of the hatch.

13 Q Is that what you meant, you are referring to the
14 coaming around it?

15 A The coaming.

16 Q When you say the fore part of the coaming you
17 meant in the forward part of the square, is that right?

18 A Yes, sir.

19 Q Was there other cargo other than cargo consigned
20 to New York also in the square of this hatch?

21 A No, sir.

22 Q All of the cargo in the square of the hatch
23 was consigned to New York?

24 A No, sir. Only the fore part.

25 Q Only the fore part?

1
2 A Yes, sir.

3 Q Was consigned to New York?

4 A Yes, sir.

5 Q How about the after part? Where was that con-
6 signed to?

7 A For Wilmington, Delaware.

8 Q If you can, captain, does this plan show what
9 portion -- in other words, is the cargo consigned to New
10 York half of the hatch square, is it a quarter, is it a
11 third? Can you estimate for me approximately how far back
12 in this square, speaking now from fore to aft, that dis-
13 tance, how far back was the New York cargo stowed?

14 A That was about --

15 Q Just an approximation.

16 A Approximate one-third of the forward length.

17 Q The only cargo, if I understood your last
18 answer correctly, was skids of tea and rolls of woolen
19 carpets, is that what you said?

20 A Yes, sir.

21 Q Could you tell me, captain, how many rolls of
22 wollen carpets were stowed in the hatch square, this forward
23 third of the hatch square?

24 A 96 rolls, sir.

25 Q 96 rolls?

1 jhlk

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2 A Yes, sir.

3 Q Does your cargo plan indicate the weight of
4 these 96 rolls of carpet?

5 A Yes. Ten tons.

6 Q When you say ten tons, are those ten short tons
7 or are they ten long tons, 2,240 pounds or 2,000 pounds?

8 A Long tons, sir, 2240.

9 Q Were these rolls of carpeting of various size,
10 I mean, various lengths? Does it show there?11 A I doesn't indicate and I don't remember very
12 much. Could have been various sizes.13 Q Captain, were there any carpets stowed in the
14 inshore wing? Do you know what I mean by the inshore wing?

15 A Yes.

16 Q That is inshore, towards the pier from the
17 square of the hatch.18 A Yes. No, there were no carpets stored in the
19 inshore wings.

20 Q None at all?

21 A No, sir.

22 Q What was stowed in the inshore wing?

23 A Skids of tea, sir.

24 Q Could you tell me, captain, what is a skid of
25 tea, as you refer to it?

1 jhlk

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2 A They are tea chests palletized into blocks,
3 made into blocks.

4 Q When you say "made into blocks," you mean they
5 are strapped onto a pallet?

6 A Strapped around.

7 Q Are they loaded on board or were they loaded
8 on board in Calcutta strapped to a pallet?

9 A Yes, sir.

10 Q Could you tell me the dimension of one of these
11 tea chests? You say there were some strapped to a pallet.

12 Do you understand my question? The tea chests
13 that were strapped to this pallet, what was the dimension
14 of a single tea chest? There was more than one strapped
15 to a pallet, wasn't there?

16 A Yes, sir.

17 Q What was the dimension of a single tea chest?

18 A Between 15 to 18 inches.

19 Q 15 to 18 inches?

20 A Yes, sir, a cube.

21 Q Are they cubes, are they the same dimension
22 in height, width, length?

23 A In cubes.

24 Q Could you tell me how many?

25 A Approximately 16 chests in a skid, sir.

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Rao - Direct

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1 jhlk
2 Q 16 to a skid?

3 A Yes, sir.

4 Q That is two high?

5 A That is two high, sir.

6 Q Are these standard skids we are talking about,
7 four by six pallets, approximately?

8 A They are about four feet high, sir, the whole
9 skid.

10 Q I am talking about the dimension of the pallet
11 itself. Is that six feet long, four feet wide, standard
12 pallet?

13 A It is four feet by four feet, sir.

14 Q About how high would you say, captain, one of
15 these skids was? I am talking now about a pallet load of
16 chests of tea.

17 A About four feet.

18 Q Where was the tea stowed? Was it stowed from
19 one side of the ship to the other or was it just stowed
20 in the hatch square?

21 A It was in the wing, in the port wing, and part
22 of it was in the square, sir.

23 Q Was any of it stowed in the offshore wing, the
24 starboard wing?

25 A A little beyond the coaming, sir, but not in the

1 jh1k

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2 extreme wing on the starboard.

3 Q When you say "the extreme wing," you mean
4 not all the way out into the starboard wing?

5 A Yes, sir.

6 Q What was in the starboard wing in the forward
7 end of that hatch?

8 A Skids of tea for New Orleans, consigned for
9 New Orleans.

10 Q When the ship arrived in New York was the New
11 Orleans cargo still in place in the hatch?

12 A Yes, sir.

13 Q How about the Wilmington, Delaware cargo? Was
14 that still in place?

15 A Yes, sir.

16 Q Was the entire end, after end of this hatch,
17 not just the hatch square, but both the wings in the after
18 part and the after part of the hatch, was that all Wilmington
19 cargo?

20 A Yes, sir.

21 Q Let me see if I understand you now. You say
22 the inshore wing in the forward part -- that is the wing
23 next to the pier -- there were pallets of tea?

24 A Yes, sir.

25 Q In the hatch square the forward part you had
pallets of tea with rugs on top of them?

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1 jhlk
2 A Yes, sir.

3 Q And you read something about dunnage. Was
4 there dunnage in there, in the square of the hatch?

5 A Yes, sir. The dunnage was laid on top of the
6 skids, plywood sheets and dunnage, and the woolen carpets
7 were stowed on top of the plywood sheets.

8 Q And some of these chests of tea, if I under-
9 stand you correctly, went a little way into the offshore
10 wing, is that correct?

11 A Yes, sir.

12 Q How many pallets of tea were stowed in #6 hatch,
13 in the 'tween deck, which were consigned to New York?

14 A 38 pallets in all, sir.

15 Q 38 pallets?

16 A 38, yes, sir.

17 Q What did these pallets of tea weigh?

18 A 33 tons in all, sir, long tons.

19 Q 33 long tons?

20 A Yes, sir.

21 Q Could you tell me, captain, when these pallets
22 of tea were loaded where were they loaded, what port?

23 A Loaded at Calcutta, sir, in India.

24 Q At Calcutta, India?

25 A Yes, sir.

1 jhlk

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2 Q When they were loaded how were they placed
3 into the wings? In other words, how did the longshoremen
4 get this tea into the inshore wing, and to the extent it
5 was in the offshore wing, into the offshore wing.

6 MR. LASSOFF: Objection, your Honor, unless
7 he saw.

8 THE COURT: Sustained.

9 A There was --

10 THE COURT: No, no. He is going to have to put
11 another question to you.

12 Q Did you see this cargo when you made up the
13 cargo stow plan, did you go around and view this cargo after
14 it had been loaded in Calcutta?

15 A Yes, sir.

16 Q Before the ship sailed did you make the rounds
17 of the ship and look at the cargo, see where it was located?

18 A Yes, sir.

19 Q After you made the rounds, is that when you
20 made up this plan?

21 A Yes, sir.

22 Q Were you at any time present on deck when the
23 longshoremen were loading at Calcutta?

24 A Yes, sir.

25 Q If you remember, were you at any time present

1 jhlk

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2 down in the hatches when the longshoremen were loading in
3 Calcutta?

4 A Yes, sir.

5 Q Is there a standard custom and practice in
6 the port of Calcutta -- just give me a yes or no answer on
7 this -- as to the manner in which pallets of tea are loaded
8 on board ship?

9 A Could you please repeat that?

10 Q Is there a custom and practice as to the manner
11 in which pallets of tea are loaded aboard ship in Calcutta?

12 A Yes, sir.

13 Q Could you tell me what is that custom and
14 practice, how do they do it?

15 A It is done by -- specially getting into the wings.
16 it is done by fork-lift.

17 Q How do they get it onto the ship, first?

18 MR. LASSOFF: If your Honor please, may we have
19 an identification as to who get it into the wings?

20 THE COURT: Yes.

21 MR. LASSOFF: Instead of "they."

22 Q Would you tell me in Calcutta, captain, who
23 loads the cargo, who loaded the cargo aboard this ship in
24 the port of Calcutta on this voyage?

25 A The stevedore laborers.

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Q Who supervised this or who gave the orders to the stevedore labor that loaded this ship?

MR. LASSOFF: Objection, your Honor.

THE COURT: Were you present?

Q Were you present on board when the ship was loaded?

A Yes, sir.

THE COURT: All right. Did you observe who gave the orders as to the loading?

THE WITNESS: Pardon me, sir?

THE COURT: Were you present when the orders were given as to how and where the cargo would be placed?

THE WITNESS: Yes, sir.

THE COURT: Who did give those orders?

THE WITNESS: I gave the orders to stevedores how to load the cargo, planning of the cargo.

BY MR. KAIN:

Q When you load this cargo what do you do?

A First of all, when the cargo bookings come one of the representatives of the stevedores, they come on board and I tell them what the plan is, I make the cargo stowage plan and I tell them how this is to be loaded, like what commodity goes where and in what space, depending on what space and commodity, keeping in view --

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Q You tell them where to put it?

A Yes, sir, I give them the compartment, tell them this is the space for this.

Q Do you tell them how to put it there, what methods to use?

A No, sir.

Q Who tells them what methods to use?

MR. LASSOFF: Objection, your Honor.

THE COURT: I will permit it. Were you present when anyone told them what method to use?

THE WITNESS: No, sir.

THE COURT: But you don't have anything to do with the method in which they load it?

THE WITNESS: No, sir, I don't have anything to do with it.

BY MR. KAIN:

Q Do you have anything to do with determining how many longshoremen in Calcutta work in a particular hatch? Is that part of your function as the chief officer?

A No, sir.

Q Do you tell them what gear to use in putting this cargo on board?

A No, sir.

Q Do longshoremen working in the port of Calcutta

1 jhlk

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2 have a foreman or a hatch boss at each hatch?

3 A Yes, sir, they do have.

4 Q Do they have a ship's superintendent or a
5 ship's foreman?

6 A Yes, sir.

7 Q Do you or your ship's officers or your crew
8 assist in any way in the cargo operation?

9 A No, sir.

10 Q Is there any other way that you know of, captain,
11 of transporting skids of tea, pallet loads of tea, into
12 the wings of a hatch other than by hilo?

13 A No, sir, it is done by means of fork-lift, sir.

14 Q Do you know of any other way of doing it or
15 have you observed it being done in any other way in Calcutta
16 or other Indian ports?

17 A No, sir, there is no other way.

18 Q Captain, the various ships that you have been
19 on, have they all be Scindia Navigation ships?

20 A Yes, sir.

21 Q Do these Scindia Navigation ships on which
22 you have served routinely call at and sail from Indian
23 ports?

24 A Yes, sir.

25 Q Is tea a commodity which you carry very frequently,

1 jh1k

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2 on these Indian ships?

3 A Yes, sir.

4 Q How about woolen rugs?

5 A Woolen rugs too, sir. It is a commodity which
6 is frequently shipped from Calcutta.

7 Q When this cargo was loaded did you instruct
8 the foreman for the Calcutta longshoremen where it was to
9 be placed in the hatch, where they were to put it?

10 A I couldn't get that, sir.

11 Q When you talked to the foreman before they
12 started to load --

13 A Yes, sir.

14 Q -- the stevedore foreman in Calcutta, did you
15 tell him where on the ship you wanted these various types
16 of cargo?

17 A Yes, sir.

18 Q In other words, did you tell him to put this
19 block of tea in the forward end of the #6 hatch?

20 A Yes, sir.

21 Q Did you also tell him to put these 96 rolls of
22 carpet in the #6 hatch?

23 A Yes, sir.

24 Q Is a roll of carpet, based on your experience
25 and your knowledge, captain, an expensive item of cargo?

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A Yes, sir, very expensive.

Q Do you take certain precautions in stowing and handling this type of cargo? I am talking now about rolls of woolen carpet.

A Precaution? Well, specially in stowing in this case, stowed on top of the tea, a few pallets of tea --

Q Let me ask you this.

MR. LASSOFF: If your Honor please, he asked a question.

THE COURT: Have you finished your answer?

THE WITNESS: No, sir.

MR. KAIN: I am sorry. I thought he was through.

THE COURT: Finish your answer.

A It was loaded on top of the few pallets of tea which was in the square of the hatch on top of plywood sheets, plywood sheets were laid on top of the tea, and then the woolen carpets were laid on top.

Q Is that the standard method employed aboard the Indian ships on which you have sailed for loading cargo?

MR. LASSOFF: Objection, your Honor.

THE COURT: I will permit it. Was it back in 1974?

Q In 1974 --

MR. LASSOFF: If your Honor please, may I --

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2 THE COURT: No, no.

3 MR. LASSOFF: He just said the longshoremen load
4 the cargo. The ship doesn't load it. So how can he
5 answer that?

6 THE COURT: Was that the standard method of
7 loading ships which you were familiar with back in 1974
8 and prior thereto?

9 Q Captain, the method you have described, loading
10 rolls of carpeting on plywood dunnage, was that a standard
11 method used by the longshoremen on the Indian ships on
12 which you served in January of 1974, December 1973, and
13 prior thereto?

14 A Yes, sir.

15 Q Were these or are these rolls of woolen carpet
16 heavy?

17 THE COURT: We have already had the weight of
18 them. Yes.

19 Q How were these rolls of carpet stowed in #6
20 hatch? Were they stowed fore and aft? Do you know what I
21 mean by fore and aft?

22 A Yes, sir.

23 Q On the axis of the ship or were they stowed
24 athwartships?

25 A They were loaded fore and aft, sir.

1 jhlk

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2 Q Could you tell me, captain, based on the
3 dimensions of the hatch, the number of carpets, the 96
4 rolls, could you tell me approximately, stowing those 96
5 rolls of carpet in the forward end of the hatch as you de-
6 scribed it, how many tiers or levels would that be, can
7 you tell me?

8 MR. LASSOFF: Objection, your Honor. We don't
9 know how much tea there is in the square of the hatch that
10 it is on top of.

11 THE COURT: Overruled.

12 Q Just talking about the height of the carpets.
13 Was it two carpets high, three carpets high, five carpets
14 high?

15 A It was three high, sir.

16 Q About how big was the diameter of these? About
17 a foot, 18 inches?

18 A About a foot, sir.

19 Q So the entire stow would be?

20 A About three feet, sir.

21 Q I am just referring now to the carpets. About
22 three feet high?

23 A Yes, sir.

24 Q Would you refer, captain, to your measurement
25 plan if necessary and tell me what was the distance from the

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deck of the 'tween deck to the overhead or the ceiling
of the inshore wing of the JALAJYOTI.

A 19 feet.

Q That is from the deck --

A From the deck to the inside of the coaming,
inside --

Q Up under the deck beams?

A Yes, sir.

Q In the wing itself?

A That is right.

Q Let's take the coaming. What is the coaming
you referred to, when you said, "inside of the coaming"?

A That is the hatch coaming, the opening of the
square of hatch --

Q Does that run around the inside of the opening?

A That is right.

Q Of the perimeters or the boundries of the
inside of the opening?

A Yes, sir.

Q Does that coaming project down below the over-
head in the wing?

A Yes, it does.

Q About how much lower than the overhead in the
wing is it if you were to drop a line directly under the

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2 coaming down to the deck, how high would that be? You
3 understand my question?

4 A You mean the clearance --

5 A I mean the clearance from the deck of the 'tween
6 deck up to the bottom of that coaming you were talking about.

7 A That would be about eight feet, sir.

8 Q About eight feet?

9 A Yes, sir.

10 Q How many tiers or how many levels or how many
11 pallets, how high were the pallets of tea that were stowed
12 in the inshore wing in the forward part of that hatch at
13 Calcutta?

14 A Two tiers, sir, two high.

15 Q And that is about how much, captain?

16 A That is about -- nearly about eight feet, sir.

17 Q And that would, if I recall your dimensions
18 correctly, bring the top of that stow up to about a foot
19 from the deck overhead?

20 A Yes, sir.

21 Q Will you tell me, captain, what the procedures
22 were aboard the JALAJYOTI while the ship was in Calcutta
23 loading? I am referring now to I think it was probably
24 December 1973. Is that when you loaded in Calcutta?

25 A Yes, sir.

1 jhlk

2 Q What were the procedures aboard the ship?

3 First of all, did you break sea watches when you got into
4 Calcutta?

5 A Yes, sir.

6 Q Would you tell his Honor and the ladies and
7 gentlemen of the jury what you mean by breaking sea watches?

8 A Breaking sea watches means when we arrive in
9 the port the sea watches that we keep, keep out at sea, we
10 cease them, stop them, and start the port watches.

11 Q When the ship is at sea do your watch officers,
12 and I am referring now to your deck watch officers, stand
13 four hours a watch and eight hours off watch? Is that the
14 watch they stand?

15 A Yes, sir.

16 Q Four on and eight off?

17 A Four on and eight off.

18 Q You have three watch standing officers?

19 A Yes, sir.

20 Q When you come into port you don't stand four on
21 and eight off, do you?

22 A No, sir.

23 Q And that is what you mean by breaking sea
24 watches?

25 A Yes, sir.

jhlk

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Q When you break sea watches and you are in port what hours did you as chief officer work?

A I worked from six morning to six evening.

Q During that period I take it you had a breakfast break and a luncheon break and a dinner break, is that right?

A Yes, that is right.

Q When cargo was or was not being worked was there an officer who relieved you at six o'clock when you were in port?

A Yes, sir.

Q What type of watch did you stand on this six in the morning to six at night? I am talking when you are in port. In other words, what did you do? Did you stand a particular watch, did you take care of certain duties? What did you do?

A Well --

Q I am talking about you now as chief officer.

A Yes, but this is particularly in port of Calcutta you are talking about, sir?

Q Yes, if it is different than in other ports.

THE COURT: Calcutta, that is what we are concerned with.

Q What did you do in Calcutta?

A Well, in the port normally the duties of the

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2 chief officer, my duty, is to load the cargo, load or dis-
3 charge the cargo, as I have planned and instructed, as
4 instructions given to the stevedores, and instruct my
5 duty officers to see that there is no pilferage, there is
6 no broken or damaged cargo, and besides cargo we have to
7 attend to the moorings, the gangway.

8 Q When you say attend to them, do you mean check
9 them to see that the ship is properly moored?

10 A Yes, sir.

11 Q And check the gangway to see that it is properly
12 trimmed?

13 A Yes, sir. During the day when I plan the cargo,
14 make the cargo stowage plan, I give due consideration to
15 the trim and stability of the ship.

16 Q You are talking now about when you are loading,
17 I take it?

18 A Yes.

19 Q Anything else?

20 A Then I instruct my bosun to carry out
21 maintenance, I give him the daily work, to look after the
22 maintenance, and also the welfare of the crew and officers.

23 Q Do you have or did you have in December of
24 1973 any of your junior officers -- I am referring now to
25 the deck department -- who were assigned to a cargo watch?

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2 A Yes, sir.

3 Q Is that a familiar term to you, cargo watch?

4 A Yes, sir.

5 Q Would you tell me, first of all, how many of
6 your junior officers were assigned to cargo watches?7 A Two, sir. Second officer from six evening,
8 6:00 p.m. to 6:00 a.m., and third officer and me during the
9 day, from 6:00 a.m. to 6:00 p.m.10 Q If I understand you correctly, you and the
11 third officer were on watch?

12 A Together.

13 Q And the second officer was on watch when you
14 went off watch?

15 A Yes, sir.

16 Q In December 1973 when you were on watch did
17 you make the rounds of the ship during stevedoring operations,
18 loading or discharging operations?

19 A Yes, sir.

20 Q Did you do this at some fixed time, captain,
21 or did you do it periodically? How did you do it? Was it
22 say at a quarter to ten that you had to make the rounds?

23 MR. LASSOFF: Can we ask the witness one question?

24 THE COURT: I will permit it.

25 A No, sir, there was no fixed time. It was done

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2 periodically, sir.

3 Q How about the third officer, who was on duty
4 with you, what did he do? Did he make it at fixed times?

5 A No, sir, no fixed times, sir.

6 Q How many hatches did the JALAJYOTI have?

7 A Six hatches.

8 Q When you made the rounds did you walk around
9 all hatches?

10 A Yes, sir, all hatches which were being worked,
11 and the other hatches, maintaining fire patrols.

12 Q If I understand you correctly, you made rounds
13 of the whole deck, is that what you did?

14 A Yes, sir.

15 Q Were you required to have an officer on deck
16 at all times or could the officer on cargo watch go in
17 for tea or --

18 A Yes, sir, they were at liberty to come for tea
19 and lunch, have lunch breaks, relax for some time. It
20 was not a continuous watch on deck, sir.

21 Q In December 1973, when this ship was being
22 loaded, specifically in Calcutta I am referring to, were
23 your ship's officers under orders to report to you any de-
24 fects which they observed in stowage or any damage to
25 cargo being loaded or any improper stevedoring method which

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2 they observed?

3 A Yes, sir.

4 Q They did have such orders?

5 A Yes, sir.

6 Q Did you receive any reports from the officer
7 on watch with you or from the second officer as to any im-
8 proper stowage or improper cargo operation aboard the
9 JALAJYOTI while she was loading in Calcutta?

10 A No, sir.

11 Q Would it have been your duty, had you received
12 such a report, to do something about it?

13 A Yes, sir.

14 Q Have you on occasion when loading in various
15 ports or discharging in various ports had some objection to
16 some procedure or something that the stevedores were doing?

17 Do you understand my question? Have you ever
18 had any occasion at any time while you were a chief officer
19 aboard the JALAJYOTI or another Scindia line ship, have
20 you ever had any occasion to object to something the steve-
21 dores did, either pilferage, improper loading, damage to
22 cargo? Have you ever had occasion to do that?

23 A Yes, sir.

24 Q When you had such a complaint what was the pro-
25 cedure, how did you take this up with the stevedore?

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A Well, I sent for the representative, the superintendent, the walking boss, any foreman who was in charge of the hatch in concern, the particular hatch, to tell them -- to point out the mistakes and rectify it, have them rectified.

Q Was it your practice to give any orders to the individual longshoremen?

A No, sir.

Q Were your ship's officers permitted to give orders to the individual longshoremen?

A No, sir, nobody.

Q What were their instructions in the event they observed pilferage, cargo damage, improper stowage, damage to cargo gear? What instructions did they have, what were they to do?

A They were told to come and report it to me, sir.

Q And then you would take it up with the stevedore representative?

A Yes, sir.

Q Now, captain, did you get any reports at all or any complaints from anybody concerning the stowage of the cargo loaded aboard the JALAJYOTI in Calcutta in December 1973?

A No, sir.

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2 Q Would you look at your logbook, captain, and
3 tell me what type of weather the JALAJYOTI encountered --
4 I don't want you to give me a day-by-day account, but I
5 want you to run through it quickly -- tell me what type of
6 weather you encountered while you were en route from Calcutta
7 to New York as shown in your logbook.

8 A Generally it was fair weather, slight sea and
9 low swells.

10 Q Roughly, captain, what is the distance from
11 Calcutta to New York?

12 A About 10,000 miles.

13 Q While the JALAJYOTI was at sea was there any
14 inspection made of the cargo holds and cargo spaces?

15 Do you understand my question?

16 A Yes, sir, out at sea were there any inspections
17 made.

18 Q Yes. In other words, was there any inspection,
19 did anybody either open up or go down to make an inspection.

20 A Yes, sir.

21 Q How often was such an inspection made?

22 A Generally it was every two or three days, sir.

23 Q By whom is it made?

24 A By me, sir.

25 Q And it was your custom and practice to make this

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1 every two or three days?

2 A Yes, sir.

3 Q Did you, captain, during this voyage have any
4 shifting of cargo in any of the cargo spaces of the
5 JALAJYOTI?
6

7 A No, sir.

8 Q You know what I mean by shifting cargo?

9 A Yes, sir.

10 Q When you got into New York and the longshoremen
11 came on board at pier 12 to discharge the vessel did you
12 have sea watches broken then too?

13 A Yes, sir.

14 Q You broke sea watches in New York?

15 A Yes, sir.

16 Q And did you and your ship's mates stand the
17 same watches that you described before, you and the third
18 mate from six to six and the second mate taking over at
19 night?

20 A Yes, sir.

21 Q Would you look at your logbook, captain, and
22 tell me whether all New York cargo was discharged from
23 #6 hatch by I think you said 4:45 on January 29, was the
24 hatch completely discharged at that time?

25 A No, sir, it wasn't completed on the 29th.

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Rao - Direct

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Q Could you tell me when it was completed?

A It was completed on the 31st of January.

Q Was #6 hatch worked on the 30th, the following day?

A No, sir.

Q How many hours was it worked on the 31st before it was complete?

A 55 minutes, sir, from 9:50 to 10:45 p.m.

Q So after the longshoremen finished work at 4:45 on the 29th they worked only another 55 minutes to finish the whole hatch, is that right?

A Yes, sir.

Q Captain, these rugs that you carried, these rolls of carpeting, woolen carpeting, were these of Indian manufacture?

A Yes, sir.

Q Had you see this type of woolen carpeting with the rolls opened up?

A With the rolls opened up, sir?

Q Yes. Have you seen them opened up, without the covering on it?

A Yes, sir.

Q Could you tell me, captain, this type of woolen carpeting which is depicted on your cargo stow plan, that

1 jhlk

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2 type of woolen carpeting, do these rolls have a core of some
3 kind? By that I mean either a wooden piece that goes down
4 or a plastic piece or a cardboard piece of some kind.

5 A Yes, sir, they did have one.

6 Q Have you observed this type of carpeting being
7 loaded aboard?

8 A Yes, sir.

9 Q And have you observed it being discharged?

10 A Yes, sir.

11 Q On the occasions when you observed this type of
12 cargo being loaded and discharged was it straight or did it
13 curve over in a horseshoe?

14 A It was straight, sir.

15 Q Could you tell me, based on your experience,
16 approximately how many of these rolls would be put into a
17 sling or slings when being loaded or discharged, what number?

18 A About five or six, sir, five or six rolls.

19 Q Captain, when you were discharging this cargo
20 in the port of New York did you or your ship's officers
21 supervise the work that the longshoremen did?

22 A No, sir.

23 Q Did you assist in it in any way? By that I mean
24 did you physically have men down in the hatch assisting
25 the longshoremen?

1 jhlk

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2 A No, sir.

3 Q Or on deck assisting them?

4 A No, sir.

5 Q Did you or your ship's officers or your ship's
6 crew participate in the actual work of discharging this
7 cargo?

8 A No, sir.

9 Q Did you, captain, during this discharge get any
10 report or any complaints from anyone concerning the stowage
11 of the cargo in the vessel's #6 hatch?

12 A No, sir.

13 Q Did you witness an injury to a longshoreman
14 during this discharge, captain?

15 A No, sir.

16 Q Did you receive a report from your ship's
17 officers or any of the stevedore foremen that a longshoreman
18 had been injured?

19 A No, sir.

20 Q In the event that you receive such a report or
21 a complaint or if you witness an accident were you required
22 to do anything with respect to your logbook?

23 A Yes, sir. We are required to make an entry in
24 the logbook, sir, and keep it as a record.

25 Q Were you also required to notify the vessel's

1 jhlk

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2 agents in New York of the occurrence of such an accident?

3 A Yes, sir.

4 Q Did you before the ship sailed from New York at
5 the completion of this discharge make any such report to the
6 ship's agents?

7 A No, sir.

8 Q Is there any logbook entry concerning an injury
9 to a longshoreman on January 29, 1974?

10 A No, sir.

11 MR. KAIN: I have no further questions of this
12 witness at this time.

13 THE COURT: All right. It is five o'clock.
14 We went a little beyond. We will continue with this witness
15 in the morning. Hopefully traffic won't be like it was
16 this morning. I do have two or three conferences that will
17 probably run a little bit beyond 9:30. So be here as close
18 to 9:30 as you can and we will try to start as close to
19 that as time will permit me.

20 Again, I remind you of this, although I don't
21 have to, but I usually do it anyway. Don't discuss the
22 case with anyone. Don't let anyone discuss it with you.

23 Have a pleasant evening. We will see you in
24 the morning.

25 (Trial adjourned to 9:30 a.m., October 14, 1976.)

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Rao - Cross

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U. K. B. R A O, resumed.

CROSS-EXAMINATION

BY MR. LASSOFF:

Q Mr. Rao, what was your last employment?

A I was a chief officer on the JALAPALAKA.

Q Is that a Scindia steamship too?

A Yes, sir.

Q When was that?

A I joined that ship 10 -- October 1975.

Q When did you leave it?

A And I left that ship in August 1976, sir.

Q And you haven't worked since then?

A No, sir.

Q When did you come here from Bombay, India?

A I arrived New York on the 11th of this month.

Q Would that be this Monday?

A Yes, sir.

Q When you arrived from Bombay, India did you bring
with you any papers?

A What kind of papers, sir?

Q Did you bring this ship's log with you from
Bombay, India?

A No, sir.

Q Did you bring this stowage plan with you from

1 jhlk

Rao - Cross

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2 Bombay, India?

3 A No, sir.

4 Q Did you bring this ship's capacity plan with
5 you from Bombay, India?

6 A No, sir.

7 Q Did you bring this other plan with you from
8 Bombay, India?

9 A No, sir.

10 Q Did you bring anything dealing with this case
11 with you from Bombay, India?

12 A No, sir.

13 Q Prior to your arriving in the port of New York
14 or at the airport-- I assume you came by plane this trip --
15 were you furnished any papers or any documents or any
16 memorandum to refresh your recollection about this voyage
17 of the JALAJYOTI in January of 1974?

18 A No, sir.

19 Q Just told you to get on a plane and come here?

20 A That is right.

21 Q Did you have any recollection of this voyage
22 of the JALAJYOTI to New York in January of 1974 before you
23 get here?

24 A Yes, sir.

25 Q What recollection did you have?

jhlk

Rao - Cross

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A Well, I remember arriving New York sometime in January and I remember we had come portside alongside pier 12 and I also remember we had come from Halifax, the last port before New York.

Q So that you had come from Calcutta to Halifax?

A Calcutta, Colombo -- that is in Ceylon -- and Bridgetown in Barbados, from there to Halifax.

Q Did you load cargo in Ceylon?

A No, sir. We went for bunkers.

Q You just went to get fuel and water?

A That is right.

Q Did you load cargo in Barbados?

A No, sir. We discharged there, sir.

Q Did you load cargo in Halifax?

A No, sir. That too was a port of discharge.

Q Incidentally, where is the rough log of the JALAJYOTI?

A That is on board the ship, sir. That is always kept on board the ship for records.

Q I give you the smooth log for the moment. Tell me, what hatches was cargo discharged from, first in Barbados and secondly in Halifax?

A Hatches 1, 2, 3 and 4 were discharged in Barbados.

THE COURT: What about Halifax?

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Rao - Cross

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2 THE WITNESS: Hatches 1 and 4 in Halifax, sir.

3 Q So that hatch #6 was not worked from the time
4 you left Calcutta, India until the time you arrived in
5 Brooklyn, New York, is that correct?

6 A There is another port before New York, Boston,
7 which I didn't remember. I only remembered Barbados and
8 Halifax. But prior to New York was Boston.

9 Q All right. Check Boston out, please.

10 A All right. Hatches 1, 4 and 5 in Boston, sir.

11 Q So I would be correct in saying that nobody
12 worked hatch #6 since leaving Calcutta?

13 A No.

14 Q When you make up a stowage plan, Mr. Rao, do you
15 enter the cargo in the stowage plan in the place where it
16 is stowed? In other words, if you are going to put cargo --
17 say that this is the hatch, this area, and you are going to
18 put cargo here, would you make the entry for that cargo in
19 the block in the stowage plan in the center, where the
20 cargo is?

21 A Yes, sir, I will indicate that.

22 Q If it were going to be in the wing you indicate
23 it in the wing, is that correct?

24 A That is right.

25 Q If it were going to be in the other wing you

1 jhlk Rao - Cross 419

2 would indicate in the other wing?

3 A That is right.

4 Q I want you to look at the stowage plan and
5 tell me why the stow of rugs is indicated to be in the wing
6 of hatch #6 at the 'tween deck level, over here.

7 A That shows woolen carpets stowed in the square
8 of hatch here, sir.

9 Q Which is #6?

10 A This is #6, sir.

11 Q Isn't this the front of the ship, isn't that
12 the bow?

13 A No, sir, this is the front and this is the stern
14 of the ship, sir. That is after and this is fore.

15 THE COURT: Is it your answer then that the
16 stowage plan does not show the rugs in the wing of the ship,
17 is that correct, in hatch 6?

18 THE WITNESS: Yes.

19 Q Looking at the stowage plan, would you tell me
20 how much New York tea was in the square of the hatch?

21 A I can't estimate exactly, but I know it is
22 definitely --

23 A I want to know from the stowage plan, sir, not
24 from what you know. Is there any New York tea shown in
25 the square of the hatch at all?

1 jhlk

Rao - Cross

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2 A Yes, sir, it indicates in the wing and square.
3 This is the line here, running right across from here to
4 here, sir, and there is a line here and a line here.

5 Q You are going to be clearer than that. Tell
6 me how much tea that plan shows in the square.

7 A Looking at the plan, I would say about ten to
8 twelve pallets in the square.

9 Q You mean skids of tea?

10 A Yes, sir.

11 Q What else is in the square?

12 A Right on top of the pallets are the woolen
13 carpets, sir.

14 Q What about the rest of the square?

15 A That is all, sir. The full square, there
16 were ten to twelve skids of tea, which were spread all over,
17 and woolen carpets were on top of it, sir.

18 Q And that is all there is in the square of that
19 hatch?

20 A That is right.

21 Q There is no Wilmington cargo in the square of
22 the hatch?

23 A That is in the fore square, sir.

24 Q What is in the other part of the square?

25 A That is for Wilmington, Delaware.

1 jhlk

Rao - Cross

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2 Q But you have the cargo plan showing the cargo
3 in the wing on the port side, the forward end -- I don't
4 see anything in the square there.

5 A This is the square, sir. You can see a line.
6 That means the whole square, the square of hatch, the forward
7 and starboard wings, and the aft part, was filled with
8 Wilmington, Delaware.

9 Q Over here you have entries in the square to
10 show where there is cargo in the square. You have no entry
11 in the forward square at all.

12 A No, there is no other commodity. There is
13 only one commodity. I did not show in every section. I
14 just mention there the whole block, which indicates that in
15 the whole block there is only wool carpets there.

16 Q This is only wool carpets?

17 A Yes, including the square, the wings.

18 Q Am I correct in saying there are 505 pieces
19 weighing 162 tons?

20 A That is right, sir.

21 Q Give me the dimensions of the square in which
22 you have the tea and the rugs.

23 A Well, the dimensions, I will have to refer to
24 the plan.

25 Q You want the other plan? Sure.

1 jhlk

Rao - Cross

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2 A The dimension of the square of the hatch, the
3 length is 36 feet, 6 inches, the breadth is 28 feet, 8
4 inches, and each section is 9.15 feet, divided into four
5 sections, sir.

6 Q In what way is it divided?

7 A That is divided in hatch covers.

8 Q Those are not automatic hatch covers?

9 A Wooden hatch covers.

10 Q Incidentally, on the main level of #6 what
11 type of hatch covers did you have?

12 A Those are McGregor steel covers.

13 Q Would you tell the jury what McGregor covers
14 are?

15 A McGregor steel covers, they are sort of steel
16 pontoons in sections, in slabs, joined by chain, and they
17 are opened and closed by means of wire, wire is rolled
18 around the block and it is slid across, so it comes in sort
19 of an axis, it comes in sort of folds, faster means of
20 opening and closing it. You slide them across and they roll
21 across on one side.

22 Q If I could perhaps clarify, these pontoons
23 that you are talking about cover the width of the hatch?

24 A That is right.

25 Q Each one would cover the hatch?

1 jhlk

Rao - Cross

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2 A That is right.

3 Q Each one would cover the hatch?

4 A That is right.

5 Q And you have more than one of these sections
6 and when the winch pulls this wire these hatch covers fold
7 upwards, they are pulled upwards, and they rest at an
8 upright position, in this case, at hatch #6, at the forward
9 end of the hatch?

10 A That is right, sir.

11 Q That is because you don't have any winches at
12 the after end of #6, they are only at the forward end?

13 A Yes, sir.

14 Q So that you would have to pull to open then
15 forward and they would stand upright forward?

16 A Yes.

17 Q And these rugs are in the forward part of the
18 square, are they not?

19 A These pontoons, I think they open the after
20 end, sir.

21 Q How can you pull something aft with forward
22 winches?

23 A The lead, the boom is forward, it leans like
24 this, and the wire goes through a block and pull aft, in
25 this case.

1 jhlk

Rao - Cross

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2 Q Do you remember which way they opened?

3 A Yes, I remember it is opening aft.

4 Q It is opening aft?

5 A Yes.

6 Q Incidentally, how did you get here on this
7 voyage from India, what route did you take? Did you go
8 through the Panama Canal, did you go around the Cape? How
9 did you get here?

10 A We came around the Cape of Good Hope, sir.

11 Q You came around the Cape of Good Hope in December
12 January?

13 A Well, towards the end of December, because we
14 arrived Halifax the 17th of -- it was the first week of
15 January. First of January we were around the Cape of Good
16 Hope, Cape Agulhas, which is the southernmost part.

17 Q What is the weather like at the Cape of Good
18 Hope in January?

19 THE COURT: What was it like back in January
20 of 1974?

21 Q I will make it simpler. Does the log indicate
22 that the ship was rolling and pitching heavily when you
23 went around the Cape of Good Hope, sir?

24 A Yes, sir.

25 Q You previously said that there were mild swells

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Rao - Cross

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1 and mild seas, didn't you?

2 A Well, that is normal weather.

3 Q That is normal, pitching and rolling heavily?

4 A No. I mentioned the weather right through the
5 voyage of 35 days and it was -- around the Cape the weather
6 is always like this, a little bit of pitching and rolling,
7 which is just normal.

8 Q It says pitching and rolling heavily. That is
9 not a little bit of pitching and rolling, is it?

10 A Well, we have maybe for a day. I would have to
11 refer again and see. But the weather I had given as slight,
12 that was the general weather, the experience throughout the
13 voyage. It is not possible for me to give weather for
14 every day's reports, so I gave a report for the whole
15 voyage.

16 Q Sir, if you go through a hurricane or a typhoon
17 on one day and the rest of the weather on that trip is
18 perfect wouldn't that hurricane or typhoon have an effect
19 on the ship and on the stowage of cargo in that ship?

20 A In that case I would mention that we had
21 experience of hurricane or typhoon. This appreciably did
22 not affect the ship. Even in a slight sea the ship does
23 roll a little bit.

24 Q But when you write in the log pitching and rolling

1 jhlk

Rao - Cross

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2 heavily that doesn't mean a light sea, does it? Rough sea
3 and heavy swells, does it say that there, rough sea and
4 heavy swell?

5 A Yes, sir.

6 Q Rough sea, heavy beam?

7 A Yes, sir.

8 Q Where are we now, sir?

9 A This is 14 of January, arriving Bridgetown.

10 Q That is in Bridgetown, Barbados, that is not at
11 the Cape of Good Hope anymore, is it?

12 A Well, yes, this is arriving Bridgetown.

13 Q How far away is Bridgetown, Barbados from the
14 Cape of Good Hope?

15 A It is about 4,500 miles.

16 Q So you had, according to your own record, rough
17 seas, heavy beam swell, rough seas and heavy swell, off
18 Barbados. Shall we look a little further in your log with
19 your mild swells?

20 Where are we now, what day? Look up here and
21 tell me.

22 A That is on the 15 of January.

23 Q Where are you at sea?

24 A Well, again off Bridgetown.

25 Q On the 15 of January what does it say?

1 jhlk

Rao - Cross

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2 A Rough sea, heavy swell, forecast moderate with
3 good visibility.

4 Q Is this a different day or is this still the
5 same day?

6 A This is the same day.

7 Q Is this when you are in Bridgetown?

8 A This is when we sailed from Bridgetown, sir, the
9 first day after.

10 Q Does it say at that time moderate sea, long
11 swell?

12 A Moderate long swells. That indicates the length
13 of the swell, sir.

14 Q Was the ship pitching and rolling in that sea?

15 A Yes, sir, rolling and pitching.

16 Q What day is this?

17 A This is on the 19 of January.

18 Q All of these references are to the ship's logs.
19 On the 19 of January does your log indicate that your ship
20 was pitching moderately?

21 A Yes, sir.

22 Q Incidentally, when you stow cargo for voyage
23 at sea do you have to stow the cargo so it would be stowed
24 adequately under the worst possible conditions you can
25 encounter?

jhlk

Rao - Cross

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1 jhlk
2 A Yes, sir.

3 Q You have told us the dimensions of the square
4 of the hatch. What were the dimensions of the square of the
5 hatch where you say this New York tea was?

6 A That would be a length of about 12 feet by the
7 width, 23 feet.

8 Q So it would be about 12 feet long by about 28
9 feet long?

10 A The breadth would be 28. That breadth is
11 constant. The length would be 12 feet.

12 Q Right. That is what I am saying.

13 A Yes.

14 Q How many drafts or pallets of tea did you have
15 in that area?

16 A I estimate about ten to twelve.

17 Q Were they single tiered or were they tiered on
18 top of each other?

19 A It was all single tiers.

20 Q Was that entire space of 28 feet in width and
21 12 feet in length taken up by those ten to twelve pallets
22 or skids of tea?

23 A No, sir.

24 Q Were there empty tea spaces in there in that
25 square of the hatch where you had that New York tea stowed?

jhlk

Rao - Cross

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1 A There were no empty spaces.

2 Q What took up the rest of the space in the forward
3 part of the square of the hatch where the tea was?

4 A Woolen carpets, sir.

5 Q Weren't those on top of the tea?

6 A Part of them sir.

7 Q Some were below the tea?

8 A Some of them right from bottom, on one end.

9 Q Some of them were on the deck between the tea,
10 is that what you are telling us?

11 A Yes, sir. No, not between. Like one side --
12 12 skids of tea, this is just a little bit -- there is a
13 lot of space there, considering 12 feet and 28.

14 Q That is what I wanted to know. What was in the
15 lot of space that would be left with those 10 or 12 skids
16 of tea?

17 A One side was the skids of tea, 10 to 12. The
18 remaining space was filled up with woolen carpets and then
19 topped up with woolen carpets over the tea, not all of it.

20 Q So that you are saying you had some woolen
21 carpets on the deck of the square of the hatch?

22 A Yes.

23 Q What did you have aft of the woolen carpets,
24 in the aft portion of the hatch, not in the square, but in
25

1 jhlk Rao - Cross

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2 the after end?

3 A You mean here?

4 Q Yes.

5 A The forward end. Well, this is all general
6 cargo, like I said, condiments.

7 Q These are odds and ends, small shipments that
8 are together?

9 A That is right, sir.

10 Q Was there any space in the square of the hatch
11 between the cargo in the forward end and the carpets and
12 the tea?

13 A No, sir.

14 Q With regard to the woolen rugs that you say
15 were in the hatch, I think you testified to Mr. Kain that
16 they were about three high, is that correct?

17 A That is right, sir.

18 Q When you said they were three high, do you
19 mean that the carpets on the deck of the square of the hatch
20 were three high or do you mean the carpets on top of the
21 tea were three high?

22 A On top of the tea, sir.

23 Q How high were the carpets that went from the
24 deck?

25 A Right from the deck, sir?

1 jhlk

Rao - Cross

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2 Q Yes.

3 A Well, that would be about 9 or 10 high, sir.

4 Q Incidentally, tell us about these carpets, would
5 you? What are their dimensions, each?6 A I don't remember the dimensions, but I can
7 give an approximate dimension. They would be about -- in
8 diameter, from 14 to 18 inches, and length could be from --
9 between 12 and 14 feet.10 Q Are these factory made carpets or rugs or are
11 these handwork?

12 A All factory made, sir.

13 Q Do you know what factory they came from?

14 A No, sir.

15 Q How were they covered?

16 A They covered with burlap, sir, called Hessian
17 cloth.18 Q Isn't it customary when you carry valuable cargo
19 which is susceptible to damage to carry it in the lower
20 hold, if you are going to top stow it?21 A No, sir, not necessarily. The idea is some-
22 times we keep it right on top of the hatch so the first
23 thing when the ship arrives at the port is discharged, so
24 that doesn't leave any chance for pilferage, there is no
25 time for anybody to pilfer, the longshoremen. If it is

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2 kept in the lower hold then it takes a long time to get
3 down to the hold and during that period anybody can do
4 anything.

5 Q You mean to say during that period a longshore-
6 man could go down to the lower hold and take your 12 to 14
7 foot rug and walk out with it, is that what you are saying?

8 A Could possibly.

9 Q One longshoreman?

10 A Because that takes time to get down to the hold,
11 two, three days stay in port. It is not possible for us
12 to keep an eye on these carpets. If it is given a top
13 stow the first thing is when you open the hatch it is dis-
14 charged.

15 Q Incidentally, when you sailed from Calcutta,
16 India in December 1973 you knew or you had to expect that
17 you were going to go around the Cape of Good Hope and into
18 Boston and New York in the wintertime, did you not?

19 A Right, sir.

20 Q And if you expect to sail to Boston and New
21 York in the wintertime you have to expect adverse weather
22 conditions, do you not?

23 A Right, sir.

24 Q These McGregor hatch covers that you are talking
25 about, don't they work on hydraulic fluid?

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2 A No, sir.

3 Q What mechanism motivates the moving parts of
4 the McGregor hatch covers?5 A These McGregor covers have got wheels,
6 eccentric wheels and balance wheels, and when you have to
7 open the hatch, the wheels are turned over, since they are
8 centric, and they are balanced on wheels, and it is fed
9 across by a wire leading from a pully and pulled across on
10 an axis, and likewise when you close the hatch you close
11 them and turn the wheels, the eccentric wheels, so that the
12 whole pontoon rests on the coaming, making it watertight.
13 You have rubber packing all over.

14 Q Do the hatch cover wheels run on a track?

15 A Right.

16 Q Is the track greased or oiled?

17 A It is greased, sir.

18 Q When you open these McGregor hatch covers under
19 adverse weather conditions if you have snow or ice on top
20 of the hatch covers doesn't that snow or ice fall down into
21 the hold?22 THE COURT: Aren't we getting afield of what is
23 involved here? I know there has been no objection, but
24 really I think we ought to confine ourselves to what is in-
25 volved in this case.

1 jhlk

Rao - Cross

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2 MR. LASSOFF: I am trying to show, your Honor,
3 very simply, that this is not the place you would stow this
4 cargo.

5 THE COURT: Next question. Next question.

6 BY MR. LASSOFF:

7 Q Do you know the difference between plywood and
8 dunnage?

9 A Yes, sir.

10 Q Is there a difference between plywood and
11 dunnage?

12 A Well, there is a difference in the quality of
13 the wood and the size also.

14 Q Tell us the difference between plywood and dunnage.

15 A Plywood is -- what we have on the ship is
16 normally -- it is about quarter inch to half-inch and they
17 are sizes of four feet by six feet, plain plywood. The
18 dunnage, they come in planks, lengths from 10 to 12 feet
19 again, and they are one inch thick.

20 Q And they are hardwood?

21 A They are hardwood.

22 Q Regular wood?

23 A That is right.

24 Q Would you tell us what your duties as chief
25 officer of the JALAJYOTI were with regard to the loading and

1 jhlk

2 discharge of cargo?

3 A Well, my duty as the chief officer was first
4 thing when I received the cargo bookings was to plan the
5 stowage of the cargo, taking all the commodities and port
6 location, the discharging location, and then I consult the
7 master and if he finds there is anything to be changed he
8 advises me, if not, it is left that way, but all this plan
9 is made taking into consideration the trim and stability of the
10 ship, which is a very prime importance, and then once
11 that is done we arrive in the port of loading, the stevedores'
12 representatives, the superintendent or anybody who is
13 in charge of the stevedores, they come on board and then
14 I discuss the stowage with him and I tell him -- I show him
15 the sections, the hatches to be worked, I tell him what
16 commodity has to go where, I tell him I want 200 tons in
17 #1, 300 tons in #2, and commoditywise, and I believe that
18 to the stevedores.

19 Q Is it part of your job as chief officer to see
20 that the cargo is put in place in accordance with the stowage
21 plan you drew up?

22 A Well, if I wanted a certain commodity in a
23 particular section and if I find it is not there I tell the
24 stevedore representative, "Look, this cargo, you have not
25 put in the right place," say it is the forward end or the

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after end or the square of hatch. I point it out to them.

3

Q My question is very simple. Is it part of your job to see that the cargo is stowed where you say it is to be stowed? Is that part of your job?

6

A Yes, sir.

7

Q With regard to the stability of the ship, first of all, would you tell the jury what the word stability of the ship refers to?

10

A The stability of the ship means when we load cargo on a ship we have 'tween decks, like a compartment on top and a big compartment below, in each hatch. When we load the cargo we concentrate, we have a plan, like put 700 tons in this hold, 600 tons in this 'tween deck, but once we plan the tonnages in each hatch then we work out what is known as the center of gravity of the ship on basis of the stability information we have on the ship. We have a booklet called "Trim and Stability" which gives certain information when the ship was in the yard. It gives light center of gravity, like center of gravity of the ship in a light condition only, like without cargo or without fuel or ballast, and when we load this cargo, when we put a certain amount of tonnage, this center of gravity, it moves up or down, depending on where you take the cargo. So the initial center of gravity is there and after the cargo is loaded that center

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Rao - Cross

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2 of gravity moves up. So then we get a final center of
3 gravity of the ship. Now we have to compare that center
4 of gravity to a certain point called the meta center. That
5 is known as CM, referred to as CM. That meta center, the
6 point M has to be about point G in order to have a stable
7 equilibrium. At the moment the G, the center of gravity
8 of the ship, rises above the point of M, the meta center,
9 the ship is unstable, and there is a certain amount of
10 calculation to be done. Sometimes it is about three feet
11 or four feet or six feet positive, that is, the G below
12 M. So in all conditions that ship is stable. Then we cal-
13 culate again with the consumption of fuel and water, like
14 we take out weight from the bottom the G rises. So we give
15 allowance for all that and see the final G. So that is the
16 stability of the ship.

17 Q And trim and stability are vital because if
18 your ship is not stable it can capsize, can't it?

19 A Yes, sir.

20 Q So that an important part of your job in putting
21 cargo into a hatch is to see that it is done in such a way
22 as to give the ship stability, is that correct?

23 A That is right, sir.

24 Q With regard to putting cargo in the square of
25 the #6 hatch, when you put those drafts of tea there, and

1 jhik
2 you knew you were going to load cargo on top of the tea,
3 was it necessary for you to use either plywood or dunnage
4 before loading cargo on top of the tea?

5 A Yes, sir.

6 Q Was that because a solid flooring would add to
7 the stability of the ship?

8 A No, it has got nothing to do with the stability,
9 sir.

10 Q What does it have to do with?

11 A That is because woolen carpets were taken there
12 on top and in order to stow the woolen carpets, being an
13 expensive cargo, it had to be leveled off, the skids of tea,
14 because there is bound to be a little bit of space, say
15 about a half-an-inch or one inch space, between the skids,
16 and also on top of the skid themselves, they are made of
17 planks, so there is going to be some space, so in order to
18 level off the top portion of the skids the plywood was laid,
19 and also this is to protect the woolen carpets, when they
20 are discharged, you are working on a level platform.

21 Q You mean so that the longshoremen would have a
22 level platform without holes or spaces to go into, correct?

23 A Pardon me?

24 Q When the longshoremen were working on top of
25 there, to have a level platform so they wouldn't go into

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2 holes or spaces?

3 A That is right, sir.

4 Q Was it part of your job to see that that dunnage
5 or plywood was placed on top of the tea?

6 A This was given as instructions to the steve-
7 dores.

8 Q You had given the stevedores instructions?

9 A For leveling, because of the woolen carpets.

10 Q But you are the one who ordered it?

11 A For this particular thing?

12 Q Yes. That is all we are talking about.

13 A Yes.

14 Q You had ordered the plywood or dunnage or what-
15 ever was put there to be put there?

16 A Yes.

17 Q Incidentally, when you order plywood or dunnage
18 who supplies it?

19 A Oh, that is supplied by contractors of our
20 employer's.

21 Q In other words, the ship pays for this, is that
22 correct?

23 A I don't know. I think the ship must be paying.
24 We have nothing to do with it in fact.

25 Q Can you show me anywhere on that stowage plan

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Rao- Cross

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2 what makes you say that the tea in the square of the hatch
3 was one tier high?

4 A Well, it does not indicate, but I remember it
5 was one tier.

6 Q You remember the stow in one hatch from 1974?

7 A No, looking at the plan. Since I had made the
8 plan I remember it was only one stow, one --

9 Q How many other plans have you made since you
10 have been going to sea as a chief officer?

11 A After this, sir?

12 Q Before or after.

13 A Well, I made I believe about nine or ten plans.

14 Q Was there some reason for you to remember this
15 square of the hatch, hatch #6 'tween deck?

16 A No, sir. Looking at the plan -- if you had
17 given me offhand I wouldn't have remembered anything. By
18 looking at the plan and going through it minutely and seeing
19 what it looks like, the number of pallets, the skids which
20 are here, 38 pallets, I would figure out part are here,
21 here.

22 Q In other words, you are figuring this out, you
23 don't remember it, you are figuring it out from the stowage
24 plan?

25 A That is right, sir.

jhlk

Rao - Cross

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Q You have no memory at all of where this stowage of cargo was?

A No, I have got a little bit of memory as far as the carpets on top of the skids, and that took one tier, it wasn't more than one tier.

Q The woolen carpets on top of the skids were not more than one tier?

A No, the skids were not more than one tier.

Q Can you show me anywhere on that stowage plan that the cargo of tea in the wing was more than one tier high?

A In the port wing there is more than one tier, sir.

Q I want you to show me where in that plan it shows that it is more than one tier.

A By looking into it, 38 pallets, stowing in a space -- this space would be 15 feet wide and a length of 10 feet and a space of 15 and 10 and a height of 9 feet, 150 and 10, that makes 2,000, and in 2,000 cubic feet it has to be more than one tier, sir, one tier will not fit.

Q But you are taking the same stow here, these 33 tons of tea, the 38 pallets, and part of those pallets are the very pallets that you say are in the square of the hatch, aren't they?

jhlk

Rao - Cross

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A Part of the pallets are there, yes, sir. How I arrived at this figure as one tier, which I remember also, is woolen carpets is 10 tons and the woolen carpet has got a storage factor of more than 200 cubic feet per ton, being a light cargo. So 10 tons by 2,000 cubic feet in the forward end of the square of hatch, there is barely 2,000 cubic feet there which is occupied by New York, which is left another 1,000 cubic feet which is loaded with skids of tea.

Q Would I be correct in saying, sir, that in this forward end of the square of the hatch and in this wing there were a total of 38 pallets of tea?

A Yes, sir.

Q And that you yourself at the present time or even by looking at this cargo plan cannot tell how many of the skids of tea were in the square and how many were in the wing?

A By looking at the square, cargo plan, I can tell you, yes, sir, 10 to 12 skids in the square of hatch, sir.

Q Can you tell by looking at the cargo plan that there were rugs put in on the deck and not skids on the deck? You said that some rugs were on the deck.

A Yes, sir.

Q Why weren't their skids on the deck?

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Rao - Cross

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2 A Because I know 10 to 12 skids of tea will not
3 occupy that area, sir, it is bound to leave a space, which
4 is occupied by the woolen carpets, sir.

5 Q One minute, please. You are saying that you
6 know that 10 to 12 pallets of tea or skids of tea will not
7 occupy that area, therefore you are saying that there were
8 rugs in the other area?

9 A That is how I remember, sir.

10 Q Then why couldn't you put more skids of tea in
11 that area?

12 A Skids of tea were started from the wings by
13 means of fork-lift, started right from the bulkhead, and
14 we come right to the hatch coaming, and the balance of tea
15 which was left over are taken into the square of hatch. That
16 is how we couldn't occupy the whole square of hatch, so we
17 started woolen carpets.

18 Q Isn't it a fact, sir, that woolen carpets are
19 a far more fragile commodity than tea? Is that correct?

20 A Well, carpets are not fragile, sir.

21 Q They are not fragile?

22 A No, sir. The skids of tea are a little fragile.

23 Q Isn't it a fact that these woolen carpets custom-
24 arily are stowed either in the lower hold or in the wings
25 of the ship so as not to be exposed to leakage of grease,

1 jhlk

Rao - Cross

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2 oil, hydraulic fluid, snow, ice, rain? Isn't that a fact,
3 sir?

4 A No, sir.

5 Q Incidentally, who made up the rough log of this
6 vessel? The third mate doesn't make entries in the rough
7 log, does he?

8 A No, this is written by the third mate, sir.

9 Q But that is the smooth log?

10 A The smooth log, yes, sir.

11 Q Who makes the entries in the rough log?

12 A The rough logbook, the entries I make. That
13 is watchkeeping officer and myself.

14 Q The third mate cannot make any entries in the
15 rough log, the permanent log of the ship?

16 A He does not. He keeps the captain's watch, in
17 fact. So captain makes entries.

18 Q Who were the deck officers on duty on January 29--

19 THE COURT: Are you going into a new area?

20 MR. LASSOFF: Yes.

21 THE COURT: We will take a little recess.

22 Ten minutes. Don't discuss the case.

23 (Jury left the courtroom.)

24 THE COURT: I had a call last night from somebody
25 in the Department of Health, Education and Welfare that

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Rao - Cross

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there had been a subpoena issued for the Social Security records.

MR. KAIN: That was me, your Honor. Not yesterday though. Our office attempted to subpoena the Social Security Pension Fund records, if that is what your Honor is referring to.

THE COURT: Whatever it may be. There was a call to my office. They indicated that it was going to be difficult for them to get them here today. They say there is some confidentiality about them and they say the regulation provides they cannot be released unless the consent of the plaintiff is obtained to release them.

Does the plaintiff consent to release them?

MR. KAIN: I can't answer for the plaintiff.

THE COURT: I am asking Mr. Lassoff.

MR. LASSOFF: I couldn't tell you that until I saw them.

THE COURT: I am asking you whether you are going to consent to release them.

MR. LASSOFF: No.

THE COURT: Then I will so order them released, which I have indicated to the Department that I would do. I think it is obvious, by the suit that you have brought in here, that you have waived any privilege that you might have.

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Rao - Cross

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2 MR. LASSOFF: I will waive any privilege,
3 your Honor. I think I gave authorization to get them al-
4 ready, your Honor.

5 THE COURT: If you did then you waived it.
6 In any event, I don't know whether they are going to get
7 them here or not. If you want to call on our phone, see
8 what their status is, you are welcome to do so. Here is
9 the correspondence that I have received.

10 (Recess.)

11 (In open court, jury present.)

12 BY MR. LASSOFF:

13 Q Were both these rugs and tea loaded in the upper
14 'tween deck of hatch #6 or the 'tween deck, whichever you
15 want to call it, in Calcutta, India?

16 A Yes, sir.

17 Q Who were the deck officers on duty during this
18 loading process in Calcutta, India?

19 A I was on duty.

20 Q Who else?

21 A And the second officer.

22 Q What were your duties during the period of time
23 that longshoremen in India, in Calcutta, were loading this
24 cargo?

25 A Main duty was to see that the commodities go

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2 into the right place, going in the right compartment, the
3 right hatch, and to check that there is no mix between the
4 ports, like for example if Wilmington, Delaware is going
5 in the after part, the forward part New York, and to check
6 if there is any damaged cargo while being loaded, if it is
7 stained, damaged, if the packages are poor, to notify
8 immediately before it is loaded on board.

9 Q Was it part of your duty when the stow of skids
10 of tea was complete to see that the longshoremen put in the
11 plywood flooring you are talking about?

12 A No, sir.

13 Q Did you see that they did that?

14 A No, I didn't -- I don't remember seeing it.

15 Q How do you know there was plywood there?

16 A Because the time it was discharged the plywoods
17 were discharged, were taken off.

18 Q Were you down in the hatch while the loading
19 was going on?

20 A I wasn't down the hatch.

21 Q Did you give orders to the stevedore to put
22 plywood on top of the skids of tea?

23 A I advised them in order to protect the woolen
24 carpets.

25 Q Was it part of your job to see that the cargo

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Rao - Cross

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1 arrived safely wherever it was sent to?

2 A Yes, sir.

3 Q Was it part of your job to see that the cargo
4 was protected in the stowage so that it would arrive
5 safely?
6

7 A I didn't get that, sir.

8 MR. LASSOFF: Would you read the question back
9 to him, please.

10 (Question read.)

11 A Yes, sir.

12 Q Was it part of your job to see that the plywood
13 that you advised was being used in the stowage of the cargo?

14 A No, sir.

15 Q As part of your job as a chief officer is it
16 part of your obligation to see that the working areas where
17 longshoremen have to work are in safe condition?

18 A The working areas in respect to -- I didn't get
19 that. How do you mean, what do you mean by safe?

20 Q Do you know what a safe place to work is?

21 A Well, safety only arises --

22 MR. KAIN: Your Honor --

23 THE COURT: Sustained.

24 Q Is it part of your job to see that the longshore-
25 men who have to work on board of your ship either loading

jhlk

Rao - Cross

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or discharging cargo have a safe flooring or working surface or walking surface to walk on?

A No, sir.

Q Do you as a part of your duties do that?

A No, sir.

Q Assume with me, if you would, that all of the cargo that is going to go into the #6 'tween deck is in place, and I am talking about in Calcutta, India, the stowage of cargo in the #6 hatch is completed, and I am referring to the tea and the rugs we are talking about here. Was anything placed over the rugs on top of the tea prior to sailing?

A On top of the rugs, sir?

Q On top of the rugs.

A No, sir.

Q So that prior to starting work discharging rugs it would not be necessary for longshoremen to remove anything from the top of the stow?

A Yes.

Q You are agreeing with me, there is nothing on top of the stow of rugs?

A To start the rugs. Not on top of the woolen carpets.

Q For the port of New York the cargo in the hatch

1 jhlk

Rao - Cross

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2 was either tea in the square or rugs in the square and
3 nothing else in the square of the hatch?

4 A Well, the square of hatch, on one side the
5 woolen carpets, after loading woolen carpets there is a
6 certain amount of consignment that comes, it is just not
7 possible to fill up the space. So there was a pocket on
8 the side of the woolen carpets, I mean, a pocket was made.
9 So that excess of dunnage which lies on deck is not kept
10 open when you proceed to sea, it is kept in that pocket.

11 Q But that is a pocket that is not going to be
12 used by either the longshoremen or the crew for any pur-
13 pose, it is just a stowage place, correct?

14 A Yes.

15 Q When the longshoremen reached the point where
16 the rugs were discharged it would become necessary at that
17 point, would it not, to remove your plywood before you could
18 commence with the discharge of the tea?

19 A Yes, sir.

20 Q As a matter of fact, is it not correct that you
21 would have to clear the square before you can work the
22 wings?

23 A Yes, sir.

24 Q Do you say that on top of these skids of tea
25 in the square there was four by eight sheets of plywood?

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1 jhlk
2 A Yes, sir.

3 Q Could you tell me why your ship's log indicates
4 that the longshoremen removed dunnage from that hatch and
5 not plywood?

6 A Well, that is because, as I said before, there
7 was dunnage, small dunnage, which was lying on deck, which
8 is excess, and we keep it in the hatch.

9 Q Why would they have to remove that?

10 A Well, so that the cargo is there and it becomes
11 absolutely -- it doesn't come in the way, in fact, makes
12 clearer.

13 Q Anywhere in your ship's log does it indicate
14 that any plywood at all was removed from the hatch?

15 A Well, I don't know. I haven't seen the logbook
16 for --

17 Q You haven't seen the logbook. I think you have
18 it in front of you. Would you look at the logbook and tell
19 me that?

20 THE COURT: What dates do you want him to look
21 at?

22 MR. LASSOFF: The 29th, your Honor.

23 THE COURT: All right. Just for the 29th.

24 A It doesn't indicate about shifting plywoods, sir.

25 Q With regard to creating a floor over these skids

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Rao - Cross

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of tea, who did you advise to do that?

A The stevedores.

Q Was there an extra charge by the stevedore for creating that floor?

A No, sir. That is a part of their job, sir.

Q Did you supply the plywood to create that floor?

A The plywood belonged to the ship.

Q Did you supply it or did you have to purchase it from the stevedore is what I am asking you.

A I didn't have to purchase it from the stevedores.

Q Where was your extra plywood stowed? You have told us that you had dunnage stowed in the corner of the hatch. Where was your extra plywood stowed?

A There were no extra plywoods.

Q There was no extra plywood on board the ship?

A No, sir.

Q Do you know where the plywood that was supposedly used on this stow came from?

A There were plywood sheets on top of the skids and besides that there were no extra plywood sheets, sir.

Q I am asking you before the plywood was put on top of the skids where did it come from?

A It was lying on deck, sir, abreast #6 hatch.

jhlk

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Q Was there plywood or dunnage used in any other hatches in connection with the loading of cargo?

A All hatches, sir.

Q Before longshoremen used the plywood or dunnage was it necessary for you to advise them to use it in each instance?

A Yes, sir, it is customary before loading a cargo that dunnage is laid on the bottom, sir, and when carpet backing rolls are loaded -- this is the custom in Calcutta -- when it is loaded dunnage floor is made and on top of that plywood sheets are laid so as to have a level, and the stevedores do it.

Q If you had seen the stow progressing and you had advised the longshoremen to use either dunnage or plywood in connection with making a flooring for the rugs and they hadn't made a flooring and you saw that what would your duty have been?

A Well, it is not necessary to indicate the dunnage. It is just normal. I mean, any cargo that is loaded on a ship has to have dunnage underneath. That is for having an even floor, in case the ship is damaged, the water can flow right across the ship and into the bilges, where it can be taken out. That is the reason a dunnage floor is laid under the cargo.

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Rao - Cross

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Q You are saying that water can flow across the ship inside the hatch?

A That is one of the reasons why dunnage is laid under the cargo, on top of the tank, before cargo is taken.

Q Maybe you didn't understand my question. I asked you where you would advise the longshoremen to use dunnage or plywood to make a floor and you saw that they were loading cargo on top of these skids of tea without making a flooring what would you have done?

A No, I didn't get that question, sir.

MR. LASSOFF: Would you repeat it to him again, please.

(Question read.)

A Well, in that case -- this is in respect to the woolen carpets you are talking about, sir?

Q Yes.

A Well, I would have told them to stop and use plywood sheets under the woolen carpets.

Q So it would have been part of your responsibility to do that, would it not?

A That is to protect the cargo, yes, sir.

Q And it was your duty to see that the cargo was stowed properly and protected?

A Yes, sir.

jhlk

Rao - Cross

455

Q And it was your duty to see that the longshoremen used plywood or dunnage to make that flooring, wasn't it?

A On top of the skids?

Q Yes, that was part of your duty as a chief officer?

A Well, that is the stevedore's -- they have to do it. They know the procedures, and it is for me to correct them.

Q I am saying it was part of your duty to see that that was done, is that correct?

A Well, I won't say it is part of my duty. This is just -- as I said, this is just in order to protect the cargo.

Q It is part of your duty to protect the cargo, isn't it?

A That is right, sir.

Q So it would be part of your duty to see that it was done, isn't that true?

A Well, in -- I would say yes.

Q If that wasn't done and because it wasn't done there was damage to the cargo would that have been your responsibility?

A Well, damage to the cargo would have been my responsibility, yes.

jhlk

Rao - Cross/Redirect

456

Q And if a longshoreman was injured in discharging that cargo because the flooring wasn't put there would that have been your responsibility?

A No, sir.

Q In other words, you are only worried about the cargo?

A That is right, sir.

MR. LASSOFF: No further questions.

REDIRECT EXAMINATION

BY MR. KAIN:

Q Captain Rao, when you stow tea in the wings of #6 hatch before you put any tea at all in that wing don't you have to determine how many tiers high it is going to be?

A Yes, sir.

Q And that is because you can't run it in with a fork-lift truck, you either put it in before you come out into the hatch or it doesn't go in, is that right?

A Yes, sir.

Q You were asked about top stowage of cargo in the #6 'tween deck. Does it make any difference whether carpets are stowed in the 'tween deck or a hold, as long as they are top stowage?

A No, sir, it does not make a difference.

Wheeler - Direct
Rao - Redirect

457

jhlk

Q Is plywood referred to aboard ship as dunnage too?

A Yes, sir.

Q In discharging tea in the wings do you use a fork-lift truck where you have palletized tea in the wings?

A Yes, sir.

Q In order to run this fork-lift truck or this hilo around is it necessary that you have a clear hatch square?

A Yes, sir.

Q That is where the fork-lift --

A So the fork-lift truck can move around.

MR. KAIN: Thank you.

THE COURT: Antying further?

MR. KAIN: No, your Honor.

THE COURT: All right. Next witness.

(Witness excused.)

W I L L I A M W H E E L E R, called as a witness

by the defendant, having first been duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KAIN:

Q Captain Wheeler, what is your present occupation?

A I am presently self-employed as a marine surveyor

1 lk Wheeler - Direct 458

2 and a marine consultant, principally here in the port of
3 New York.

4 Q Could you, captain, tell his Honor and the
5 ladies and gentlemen of the jury your marine background
6 and your qualifications to work as a marine consultant
7 and a marine surveyor?

8 A Yes, sir. 1935 finished high school, I went
9 to sea as an ordinary seaman. In 1936, after about a
10 year-and-a-half at sea, I came ashore, I worked as a rigger
11 in construction work. In 1938 I was enrolled in the Maritime
12 Cadet Training Program, now known as the U.S. Merchant
13 Marine Academy, and I was graduated from that course of
14 training in 1941 with a third officer's license. I sailed
15 as third officer, second officer, chief officer, finally
16 in 1945 I qualified as master with an unlimited license,
17 any ocean, any tonnage. I sailed as master through 1948,
18 reverted back to chief mate, called to active duty with the
19 Navy in 1950-51, with Korea. The end of '52 I came back to
20 merchant shipping as chief officer -- the middle of '52 --
21 the end of '52 I came ashore and I worked as a stevedoring
22 superintendent here in the port of New York until 1955,
23 when I went back to sea as master. At the end of that voyage,
24 a period of about six months as master, I came ashore into
25 my present activity, at the end of '55, as a marine surveyor.

1 jhlk

Wheeler - Direct

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2 Q Captain Wheeler, was part of your sea experience
3 on ships on the India run?

4 A Yes, sir, I was two years on the India service.

5 Q And have you, captain, in your sea experience,
6 been aboard ships which carried wool carpeting?

7 A Yes, sir.

8 Q Manufactured in India?

9 A Yes, sir, from India and also from the Middle
10 East, the Near East.

11 Q How was this cargo packaged?

12 A The carpets are packaged --

13 MR. LASSOFF: Your Honor, may I be heard for
14 a moment?

15 THE COURT: Yes.

16 MR. LASSOFF: This gentleman has not been to
17 sea since 1955, your Honor.

18 THE COURT: When was your last experience with
19 carpets packaged in India?

20 THE WITNESS: Carpets was when I was with
21 American Export Lines. About 1952 would be the last
22 voyage I made. We carried many carpets, especially on the
23 passenger ships.

24 THE COURT: Do you know anything with respect
25 to the last few years?

1 jhlk

Wheeler - Direct

460

2 THE WITNESS: Well, as a surveyor I have had
3 occasion within the last -- I would say four years ago to
4 attend at a survey of damaged carpets coming from Puerto
5 Rico.

6 THE COURT: I think you have to develop this
7 a little bit more, Mr. Kain.

8 BY MR. KAIN:

9 Q Captain, in the carriage of carpets how are
10 they customarily carried, in other words, what location in
11 the hatch?

12 A They are carried -- they are indicated when they
13 are prepared to be loaded on the ship as what we call top
14 stowage, meaning that they are to be loaded in any compart-
15 ment, but they must be on top of anything else in that com-
16 partment.

17 Q Based on your experience, does it make any dif-
18 ference from the point of view of good stevedoring practice,
19 as long as they are top stowage, does it make any difference
20 whether they are between decks, lower holds?

21 A No, sir, no difference, depending on the
22 itinerary of the voyage.

23 MR. LASSOFF: If your Honor please, we once
24 again have a man who has not worked for a stevedoring
25 company since 1955.

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jhlk

Wheeler - Direct

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THE COURT: I asked Mr. Kain to develop whether or not he had any experience with respect to the last few years, either as a surveyor in connection with that or otherwise.

Q Captain, in connection with your work as a marine consultant and a surveyor are you still moving about the waterfront and do you still do surveys?

A Yes, sir.

Q Are you called in to consult on cargo problems?

A Yes, sir, I am.

Q And terminal problems?

A Yes, sir, I am. As a surveyor I have been aboard thousands of ships. As a seagoing ship's officer I served aboard about 15 to 20 ships. But as a surveyor my exposure to the industry is much broader than as a ship's officer.

Q And are you still attending aboard ships on surveys and on investigations and things of that type?

A Yes, sir, I am.

Q At the present time?

A Yes, sir.

THE COURT: And you have made such surveys in connection with the transportation of rugs and so forth?

THE WITNESS: I can't recall -- the last one I

1 jhlk

Wheeler - Direct

462

2 recall was the one I mentioned. But I attended aboard
3 ships for other reasons that had charge of carpets in stow.

4 THE COURT: Very well.

5 THE WITNESS: I have attended aboard at piers
6 that had transient sheds that had warehousing.

7 THE COURT: Within the last four or five years
8 and during the last four or five years?

9 THE WITNESS: Yes, sir.

10 THE COURT: Very well.

11 MR. KAIN: Would you read back my last question.

12 (Record read.)

13 BY MR. KAIN:

14 Q Does it make any difference, captain, as long
15 as we have a top stowage, whether it is top stowage in a
16 hold, on a 'tween deck?

17 A No, sir, it doesn't make any difference, the
18 level of the compartment, as long as there is nothing of
19 any weight resting on top of the carpet. The only thing
20 you can put on top of carpets is more carpets and they can
21 be nested, just like pipe is stowed, they are nested, you
22 come up three or four heights, and you wouldn't want to go
23 any higher than that with rolls of carpet.

24 Q Based on your experience, captain, as a surveyor,
25 a stevedore and a ship's officer, are rolls of carpeting

1 jhlk Wheeler - Direct 463

2 fitted with a core of some kind, either a wooden one or a
3 plastic one or a cardboard one?

4 A Yes. The shipments of carpet, rolls of carpet,
5 there is a core in the roll of carpet to give it some
6 rigidity. If it wouldn't it would be a roll, it would be
7 flat, it would be oval shapes.

8 Q Will you look, captain, at the cargo stowage
9 plan in front of you, specifically at the #6 hatch.

10 A Yes, sir.

11 Q Does that cargo stowage plan indicate that that
12 'tween deck in #6 hatch is fully stowed?

13 MR. LASSOFF: If your Honor please, at this
14 point I object to leading the witness.

15 THE COURT: All right. Rephrase the question.

16 Q Would you look at the cargo stowage plan, captain,
17 and tell me does it indicate --

18 THE COURT: What does it indicate?

19 Q What does it indicate with respect to the
20 amount of carpeting stowed in the upper 'tween deck?

21 A It shows that the after end of #6 'tween deck,
22 the after three-fifths, about, of the upper 'tween deck is
23 stowed with a shipment for Wilmington, Delaware and it
24 says rolls. The rest of that shipment is in the lower
25 hold and it says CB roll. That means carpet backing rolls.

jhlk

Wheeler - Direct

464

1 That is a part of the same lot. So there is 505 rolls of
2 carpet in the after three-fifths of the upper -- of the
3 'tween deck of #6. In the forward two-fifths of the 'tween
4 deck there is a shipment of cargo -- shipments of cargo for
5 New York. One shipment was loaded at Madras in India and
6 that was stowed against the forward bulkhead, meaning the
7 fore part of the ship straight from the port side to the
8 starboard side, right straight across the ship up against
9 the forward bulkhead. Aft of that it shows a line coming
10 across, it is not a straight line coming across, part of
11 that Madras cargo extended down on the port wing, so in that
12 area, in the remaining area between the Wilmington shipment
13 and the shipment of cargo for New York that was loaded at
14 Madras is stowed 38 pallets of tea and 96 rolls of carpet
15 and five pallets of tea for New Orleans. All of these three
16 lots that I just mentioned were loaded at Calcutta.

18 Q Does the plan indicate whether it is fully loaded
19 in the sense of the height of the cargo in the hatch?

20 A No, sir, it doesn't indicate. There would be
21 no way. This is a two-dimensional plan and it shows -- an
22 experienced eye looking at this plan would know because you
23 know how much cubic feet tea takes up, you know approximately
24 how much carpet takes up, and you know that this compartment,
25 the forward end of this compartment, as well as the after

1 jhlk Wheeler - Direct 465

2 end of this compartment, is not stowed all the way up to the
3 overhead.

4 Q Captain, will you look at that measurment plan
5 that is underneath there.

6 A Yes, sir.

7 Q Does that plan indicate the distance between
8 the overhead in the port wing of the #6 'tween deck?

9 A Yes, sir, it indicates that there is a height
10 from the deck of the 'tween deck to the deck beams of the
11 weather deck, interior height, of nine feet.

12 Q Assuming, captain, that you had two skids of
13 tea, in other words, one stowed on top of the other, in
14 that wing --

15 A Yes, sir.

16 Q -- as described, I think approximately 15 to
17 18 inches cubed on a pallet four feet square, could you tell
18 me, first of all, are you familiar with this type of skid
19 and tea package?

20 A Yes. Chests of tea, it is a common commodity
21 on the India service and these days palletizing many differ-
22 ent kinds of freight is not uncommon. In fact, it is be-
23 coming more usual everyday.

24 Q Can you approximate for me the height of one of
25 these?

jhlk

Wheeler - Direct

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1 jhlk
2 A A pallet of tea would be between three-and-a-
3 half to four feet, maximum four feet, including the height
4 of the pallet.

5 Q Assuming, captain, tea stowed in the wings two
6 pallet loadshigh, throughout the forward part of the forward
7 wing, based on your experience as both a ship's officer and
8 a stevedoring superintendent and a marine surveyor, would
9 it be feasible to overstow any portion of the tea in the
10 wing with carpets?

11 A It would not be practical to do it. You could
12 jam it in there, but that would cut off the ventilation.
13 We always like to keep about a foot over the top of the cargo
14 for ventilating the compartment. And the two pallet loads
15 of tea would be about eight feet high, so you would only
16 have about a foot on top of -- men couldn't work in
17 that space a foot high.

18 Q Assuming they were jammed in, as you put it, would
19 they have to be taken out the same way?

20 A Yes, sir.

21 Q Is there room for a longshoreman to work --

22 A No, you would have to reach in there with a
23 wire hook or a chain hook of some sort and drag them out.
24 It wouldn't be done.

25 Q If they were to be stowed on top of two pallets

jhlk

Wheeler - Direct

467

of tea in a wing of that dimension, that height, would that in your opinion be good stevedoring practice?

A It would not be good stevedoring practice.

Q Now captain, could you tell me briefly what is meant by trim and stability of a ship?

A The trim means the relationship of the forward end of the ship to the after end of the ship. It means where she is drawing more water forward or more water aft. It is the trim of the ship in a longitudinal direction, fore and aft.

Stability of the ship is the characteristic of the ship that is determined by the distribution of water more with a vertical consideration, low water and high water, and it is the characteristic of the ship to roll as a response to external forces and the characteristic is controlled by the location of the various weights in the ship, both permanent weight, like the big main engine, fuel oil down the bottom, and the cargo and the superstructure, and if you think of it as a roly-poly, a child's toy, the more weight in the bottom, when you push it over the quicker it comes back vertical. When you want to slow it down you put more weight on top and it would come back, but it would come back comfortably. This is the desired position to develop and maintain with a ship, to have a

1 jhlk Wheeler - Direct 468

2 comfortable ship under sea conditions, because in port the
3 only way you can list a ship over is by moving weights.
4 When you are at sea the whole surface of the ocean changes,
5 a big slope of the heavy swell or the long swell, and the
6 ship is crossing, and the ship will have a tendency to right
7 itself, even though the force of the sea is being exerted
8 on it to lean it over, the ship has a tendency to right
9 itself. So this makes it comfortable to have a ship at
10 sea. A passenger ship has a very good stability. The
11 measure of the stability is the roll period, how long it
12 takes the ship to make a complete roll. A typical passen-
13 ger ship will make a roll in about 30 seconds. A typical
14 freight ship will make a roll in about ten seconds. So
15 that the passenger ship is much more comfortable.

16 Q Captain, what effect, if any, in your opinion,
17 would the stowage such as depicted in #6 hatch on that stow-
18 age plan have on the trim and stability of that ship?

19 A Negligible. The amount of cargo is 33 tons of
20 tea and we are talking about -- the ship is capable of
21 picking about 12,000 tons. So the amount of 33 tons
22 here, put it up on top of the stack and it is not going to
23 make too much difference, negligible. You look at the whole
24 ship when you are talking about stability.

25 Q In terms of stability would it make any

1 jhlk

Wheeler - Direct

469

2 difference whether all of the tea was stowed in the wings
3 or whether it was all stowed in the hatch?

4 A No, not really, as long as you took provision
5 to see that it doesn't shift when the ship is at sea.

6 Q Captain, will you assume with me that there has
7 been testimony in this case that the plaintiff and a
8 fellow longshoreman were working on a stow of carpeting
9 overstowed on palletized tea and that the plaintiff stated
10 that after stepping backward to adjust his leverage in
11 order to assist in rolling a roll of carpeting out into the
12 square that a piece or a roll of carpeting sank under him
13 and that he fell backwards or to his left, rather, in a
14 hole between the perimeter of the stow in the wings and the
15 perimeter or the side of the ship.

16 A Yes, sir.

17 Q And will you assume further that the plaintiff
18 described this hole as approximately four feet in diameter
19 and that he further stated that there was no shoring or
20 fencing in the area where the hole existed.

21 Would you tell me, captain, based on your
22 experience as a stevedore superintendent and a ship's
23 officer, what the effect of such a hole would be with respect
24 to the cargo in a ship transitting from Calcutta to the port
25 of New York?

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jhlk

Wheeler - Direct

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A Yes, sir. The cargo that had made up or

3

comprised the walls of that hold, the lateral barriers of

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that hold, creating the hole, when the ship is at sea,

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that cargo, no fencing and no chocking, that cargo would

6

have moved into that space. There is inertia forces on

7

everything on the ship. When the ship is pitching and

8

rolling at sea everything is subject to the force of

9

inertia. When the ship rolls under it the commodity is

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going to continue to move slightly or seriously, depending

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on the conditions that exist, and everything moves on a

12

ship. The dishes on the table will move if the ship gets --

13

if the weather gets bad enough.

14

With regard to the cargo on top of that hole,

15

the question would arise what holds it up. The condition

16

that has been described to me in this question is impossible.

17

You could never encounter such a condition on board a ship,

18

on board a cargo ship.

19

Q Will you assume further, captain, that the

20

plaintiff's fellow longshoreman, a Mr. Green, testified to

21

a hole in the stow in the wings, in the center of the stow,

22

which he said was circumscribed by loose chests of tea,

23

not palletized, loose, but which he again described as

24

approximately six feet deep.

25

A Right.

jhlk

Wheeler - Direct

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1 jhlk
2 Q Would you tell me, captain, based on your
3 experience as a ship's officer and as a surveyor and a
4 stevedore superintendent, in your opinion, what would occur,
5 assuming such a hole at the time of loading at Calcutta,
6 while the ship was transiting from Calcutta to New York?

7 A The loose chests of tea would have shifted into
8 that space. The cargo will shift only if there is space
9 for it to shift into. That is common sense.

10 Q Captain, is it possible to load a dry cargo ship
11 with general cargo and have no spaces in the stow?

12 A No, it would be impossible, because the ship
13 is not regularly shaped compartments. There is sheer to
14 the plating of the ship, the deck itself has a camber to
15 it. There are all sorts of obstructions in the cargo
16 compartment, such as the beams, the girders, the columns,
17 the ladders, the sounding tubes, the steam pipes, or what-
18 ever may be part of the structure of the ship, and the
19 cargo has to be stowed around these obstructions. So it
20 is impossible to stow it without any -- like a tiled floor.
21 You have to have some spaces, spaces that can be measured
22 in inches or maybe a foot.

23 Q Assuming proper stevedoring practices, would
24 you expect to find more holes in a stow in a square of a
25 hatch or in the wings of a hatch, captain?

1 jhlk

Wheeler - Direct

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2 A In the square of the hatch, because you start
3 loading the ship, loading that particular hatch, from the
4 ship's side and you fill it up and you work your way out to
5 the square of the hatch. Then suddenly maybe possibly you
6 run out of cargo or you don't have suitable cargo to fill up
7 the smaller spaces. So you leave the space and you fill it
8 up with suitable cargo if available. Otherwise you chock
9 it out, you have to put wood in there to block it out and
10 to brace it, anticipating the roll of the ship at sea.

11 Q Captain, is there a custom and practice in the
12 port of New York with respect to supervising the work of the
13 individual longshoremen?

14 A Yes, sir, there is.

15 Q And what is that custom and practice?

16 A The longshoremen take their instructions and
17 their directions from the stevedore supervisor.

18 Q Captain, assuming a dry cargo ship with holes
19 throughout the stow and assuming further --

20 MR. LASSOFF: If your Honor please, I object to
21 that assumption. There is no such testimony in this case.

22 MR. KAIN: If your Honor please, the mate has
23 testified or Captain Wheeler has testified it is impossible
24 to load them without holes.

25 MR. LASSOFF: Your Honor, the chief officer said

1 jhlk

Wheeler - Direct

473

2 there weren't any.

3 THE COURT: Overruled.

4 BY MR. KAIN:

5 Q Assuming a stow of general cargo with holes
6 in the stow, in the port of New York, of cargo to be dis-
7 charged, is there a custom and practice with respect to
8 furnishing the longshoremen who are discharging with a
9 working surface --

10 MR. LASSOFF: Objection, your Honor. This man
11 has not worked as either a stevedoring superintendent or
12 a ship's officer for 21 years.

13 THE COURT: I will overrule it.

14 A When the cargo is to be discharged --

15 MR. LASSOFF: Objection again, your Honor. That
16 is not the question.

17 A There is such a custom and practice, yes.

18 Q What is the custom and practice?

19 A When the cargo is to be discharged and if other
20 cargo had been loaded on top of that particular cargo a
21 floor of dunnage would have been necessary to distribute
22 the weight of the cargo on top to the weight of the --
23 to the cargo below. Now that upper cargo has been removed.
24 Now the longshoremen go in, remove the dunnage, whether it
25 be plywood dunnage or whether it be boards, wooden board

1 jh1k Wheeler - Direct/Cross 474

2 type of dunnage. You remove the dunnage, make up drafts
3 of the dunnage and get them out of your way. Then you pro-
4 ceed to hook up the cargo that you are going to discharge.
5 So you have to clear the cargo that you are going to dis-
6 charge before you discharge it.

7 Q Does good stevedoring practice require that
8 longshoremen be furnished with a walking or working sur-
9 face during discharge?

10 A Good stevedoring practice requires that the
11 longshormen provide and create and maintain their working
12 conditions or walking conditions. If they cannot manage
13 to do their job under the conditions that they find they
14 lay down walking boards or they use plywood or they use
15 dunnage to create a surface suitable for what they intend
16 to do.

17 Q Is this surface that you have described created
18 by the longshoremen who are doing the discharge themselves?

19 A Yes, sir, under the direction of the hatch boss,
20 gang by gang. Each gang of longshoremen has their own
21 hatch boss.

22 MR. KAIN: I have no further questions at this
23 time, your Honor.

24 CROSS-EXAMINATION

25 BY MR. LASSOFF:

jhlk

Wheeler - Cross

475

Q Captain Wheeler, in order to either create a surface or remove a surface you have to reach the place where the surface is first, don't you?

A Of course.

Q And if you are still working on rugs on top of the chests of tea you can't put any dunnage down until you take the rugs off, isn't that correct?

A That is right. Loose dunnage, debris, whatever, any loose material has to be removed before you can continue the work.

Q As a matter of fact, if you got the stow covered with rugs you can't see that there is no plywood underneath the rugs until you get the rugs out, can you?

A That is right, and you can't walk on it either.

Q So that this condition if it existed with rugs on top of palletized tea and with your admission that in a cargo hatch there must be spaces, if there weren't dunnage or plywood there that would be an unsafe condition, wouldn't it?

A No. The proper use of dunnage or plywood or walking boards is part of a stevedore's everyday work. That is what the longshoremen are trained to do.

Q Sir, we are talking about working on top of a stow of rugs.

jhlk

Wheeler - Cross

476

1 A Right.

2 Q Some two to three high on top of skids of tea.

3 A Yes, sir.

4 Q The working surfaces are covered by these rugs.

5 Do you understand that?

6 A I can't understand that. If it is covered by
7 the rugs it can't be a working surface.

8 Q If you are on top of the rugs it is a working
9 surface?

10 A The top of the rugs is a working surface, right.

11 Q Underneath this working surface these rugs are
12 stowed on top of skids of tea?

13 A So I understand in this instance, yes.

14 Q And there is no plywood or dunnage?

15 A Are you asking me to assume that there is none?

16 Q I am asking you to assume that.

17 A All right, yes, sir.

18 Q And in the course of working thereon, while this
19 area is still covered by these rugs, wouldn't there be
20 spaces underneath the working surface of the rugs by nature
21 of the ship's construction itself?

22 A As I mentioned,

23 Q Just yes or no, captain.

24 A Space, yes, a matter of inches, yes, sir.

jhlk

Wheeler - Cross

477

Q And if that was permitted to be loaded that way wouldn't that be a dangerous condition if they didn't use plywood or dunnage to make a working surface?

A A matter of inches? The carpets wouldn't fit into that space. No, sir, it is not dangerous.

Q I am not asking about a matter of inches.

A When I describe space I am talking about a matter of inches. I am sure you are talking about a matter of feet.

Q I thought you said a matter of inches to a foot.

A That is right.

Q And a man's body can fall through a foot of space?

A Yes, sir, but a foot-and-a-half roll of carpet can't go through the foot.

Q Who said anything about that.

A That is what I have heard while I have been here and that is my observations. I have seen rolls of carpet a foot to a foot-and-a-half.

Q Sir, I want you to assume that they top stowed the carpets on top of skids of tea and they didn't use dunnage or plywood and that the longshoremen had to work on top of these rugs or plywood.

A On top of the rugs.

jhlk

Wheeler - Cross

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2 Q On top of the rolls of rugs, in order to get
3 them out.

4 A Okay.

5 Q Would that be a dangerous condition?

6 A No.

7 Q It wouldn't in your opinion?

8 A No.

9 Q Suppose that there were empty spaces in the stow,
10 that the hatch --

11 A Under the carpets.

12 Q Under the carpets. If the hatch was not complete-
13 ly stowed, would that be a dangerous condition?

14 A Not while they are working on top of the rugs.

15 Q Suppose that because of the empty spaces in the
16 stow the cargo had shifted, created holes?

17 A If it had shifted, yes, it is potentially
18 dangerous, if it had been shifted. But this would be dis-
19 covered by the stevedore when he opened the hatch and the
20 stevedore wouldn't touch it until a survey had been done
21 on it.

22 Q The stevedore had discovered that 14 foot rugs
23 had fallen into four foot spaces the minute he opened the
24 hatch?

25 A When cargo shifts --

jhlk

Wheeler - Cross

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Q Just yes or no, sir. I asked you a question.

A He would see indications that the cargo had shifted. A trained surveyor would see the indications, they are plain as the nose on your face, that the cargo had shifted, because if the rugs had shifted into the hole, whatever cargo was adjacent to the rugs would move into that position too.

Q Did I hear you say a trained surveyor would see that?

A Yes, sir, an experienced surveyor.

Q We are not talking about surveyors now. We are talking about longshoremen.

A An experienced stevedore superintendent would see it.

Q We are not talking about stevedore superintendents. We are talking about longshoremen.

A The longshoremen don't enter the hatch until their stevedore superintendent tells them to go in or their supervision tells them to go in. The supervision is required to inspect the area before you send your men in there.

Q Sir, you were here all day Tuesday, were you not?

A I believe so. I have lost count of the days

jhlk

Wheeler - Cross

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of the week this week.

Q And you were here yesterday afternoon?

A Yes, sir, I was.

Q And you are here today? Not this morning.

Excuse me.

A All right. Yes, sir, I have been.

Q You heard the mate testify that the width of the square of the hatch was 28 feet and some inches?

A Yes, sir. That is confirmed on this plan.

Q And he said that about 12 feet of the forward end of the square of the hatch had this cargo of skidded tea, is that correct?

A I could accept that, yes.

Q That is what he said.

A Yes, that is all right.

Q Did you hear it?

A Yes, I heard that.

Q By simple mathematics you would know in advance that four by four skids in a 28 foot wide space 12 feet long, that you would fit 21 of those skids of tea into that space in order to make a solid flooring of tea in that square?

A If you intended to fill up that section of the square it would require that many skids of tea.

1 jlk

Wheeler - Cross

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2 Q And 21 skids of tea would fit there, correct?

3 A If you had -- yes, they would fit there, if you
4 had them.

5 Q That is the space you have?

6 A Yes.

7 Q Not 10 or 12, 21?

8 A I didn't do the mathematics, but I will accept
9 your mathematics.

10 Q It is simple enough. 28 feet, four feet skids,
11 that is 7 widths, 12 feet would be three across.

12 A Three across.

13 Q 21, right?

14 A Right. I didn't check your mathematics. I
15 didn't think of it that way.

16 Q If you were going to stow cargo of rugs in the
17 square of the hatch wouldn't the proper way to stow that
18 cargo of rugs be to fill that space with skids, fill the
19 floor, then put the rugs on top of that 28 feet in width,
20 12 feet in length of skids of tea?

21 A That would be one way, if you had sufficient
22 palletized tea to do this, that would be one way of doing
23 it. If you don't have sufficient palletized tea to fill
24 up the hatch then the other way is to make a well by plac-
25 ing the palletized tea and placing carpet down. The over-

1 jh1k Wheeler - Cross 482

2 flow of the carpet would come on top and you chock it
3 off with drafts of dunnage.

4 Q You are going to put in 38 skids. That is
5 what the cargo plan says, right?

6 A That is right.

7 Q So that you know you have enough room to put
8 in 21 --

9 A No. Wait a minute.

10 Q Let me finish the question first.

11 A I am sorry. Go ahead.

12 Q If you single stow the tea in the wing you have
13 enough tea to put in the 21 skids of tea in the square,
14 correct?

15 A That is right.

16 Q And if you check other parts of that cargo plan
17 you will see that there are other rugs on that ship and
18 they are in the wings, is that not a fact?

19 A No objection to putting carpets in the wings
20 if you have sufficient carpets to fill up the square and
21 the wings too, no objection.

22 Q And it would be better practice, would it not,
23 to load that square with solid cargo and then put the rugs
24 on top of solid cargo rather than fit them nine or ten
25 high on top of each other? That weight would disturb the
rugs, wouldn't it?

jhlk

Wheeler - Cross

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2 A Not necessarily, no.

3 Q Didn't you testify when Mr. Kain asked you that
4 it would not be good practice to load these rugs more than
5 three high?

6 A I said three or four high, if I remember right.
7 That is what I would do.

8 Q If you are going to load to deck level and make
9 an even stow to the level of the rugs stowed on the pallet-
10 ized tea that brings you up to at least seven high, doesn't
11 it?

12 A It would, depending on the nature of the commod-
13 ity of the carpet.

14 Q You don't know about the nature of the commodity
15 of the carpet, do you?

16 A I know the nature of the commodity that I have
17 seen. It depends on if it is woolen carpet.

18 Q It says woolen carpet.

19 A If it is Persian carpets, more expensive carpets,
20 you put them in a special cargo locker and you might only
21 go two or three high. But woolen carpets you could go
22 possibly -- I haven't carried woolen carpets in recent
23 years.

24 Q What is your testimony based on? You are suppos-
25 ed to be --

jhlk

Wheeler - Cross

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2 A My observations as a surveyor.

3 Q This particular ship and this cargo.

4 A I have seen the cargo coming in, I have seen
5 it four, five, six, seven, eight high. But I wouldn't do
6 it as a ship's officer. In my experience I would put it
7 three or four high.

8 Q So that good practice by the ship's officers
9 would not be to put those rugs seven high?

10 A What I do maybe doesn't make it good. Maybe
11 I am trying to exceed good, do better than good. This de-
12 pends on the custom and practice on the ship, it depends
13 on the history of the ship, whether they incur any damage
14 claims to the cargo. They are in the business right now.

15 Q Sir, you don't know anything about the history
16 of the ship, do you?

17 A I know --

18 Q Just yes or no. Do you know anything about the
19 history of the ship?

20 A No. I don't ever recall being on the ship.

21 Q So you know nothing about the ship whatsoever?

22 A That is right.

23 Q You have not worked either as a stevedore
24 superintendent or a ship's officer for 21 years, is that
25 correct?

jhlk

Wheeler - Cross

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1
2 A That is right. I have worked with those people,
3 not as -- not in the job classification, no, sir.

4 Q As a matter of fact, your major area of interest
5 right now is to go on ships to survey damage to cargo,
6 isn't it?

7 A I don't do much cargo damage. I do some cargo
8 damage. Most of my activity is with regard to structural
9 damage to the ships or to the piers or to the damage in-
10 curred or created by ships hitting piers or by trucks
11 damaging pier structures or whatever.

12 Q Most of your work in the last couple of years
13 has been in court here testifying in personal injury cases,
14 isn't that correct?

15 A The last three or four years, this area of the
16 industry has increased, yes.

17 Q Before that you did do survey damage reports
18 on cargo?

19 A I still say I never did get extensively involved,
20 I do some cargo work.

21 Q And you know that when ships arrive here quite
22 often there is damage to the cargo because of improper
23 stowage or improper handling?

24 A Not quite often. When you regard the millions
25 of tons that we import into this port it is not very much

1 jhlk

Wheeler - Cross/Redirect

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2 damage.

3 Q A lot of the cargo we import is not damageable,
4 isn't that a fact?

5 A You mean bulk cargo, oil, coal, such as that?

6 Q That is a great deal --

7 A Coal is damageable, oil is damageable. They can
8 be contaminated.

9 Q But not by handling by longshoremen?

10 A It is not handled by longshoremen.

11 Q Sir, would it be fair to say that you yourself
12 never have been on board the JALAJYOTI, know nothing about
13 the stowage of the cargo on the JALAJYOTI except for the
14 cargo plan that is in front of you, and have no knowledge
15 as to the physical makeup of the carpets or rugs involved
16 in this accident?

17 A I have no personal knowledge, no.

18 MR. LASSOFF: No further questions.

19 A Only what I have been told.

20 REDIRECT EXAMINATION

21 BY MR. KAIN:

22 Q Captain, based on your experience, assuming a
23 hole four feet in diameter covered with one or more one foot
24 to a foot-and-a-half diameter carpet roll, and assuming
25 a longshoreman such as Mr. Ruffino, weighing approximately

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jhlk

Wheeler - Redirect

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166 pounds, would you expect that if Mr. Ruffino stepped on that roll it would bend underneath him?

A The roll would not bend if it was extending out over that unsupported area. I take it back. It would bend slightly, but not enough to disturb his equilibrium on the roll.

THE COURT: Anything further?

MR. LASSOFF: No, your Honor.

THE COURT: All right. You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. KAIN: If your Honor please, I have a doctor for this afternoon.

MR. LASSOFF: I think it is one o'clock, your Honor.

THE COURT: I know what time it is.

All right. We will suspend for lunch. We will resume at ten minutes after two. Have a pleasant lunch. Don't discuss the case.

(Jury left the courtroom.)

(Discussion off the record.)

MR. KAIN: If your Honor please, my associate called the Social Security Administration and they said it would necessitate somebody driving up from Baltimore.

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2 THE COURT: All right. I would expect that you
3 gentlemen will sum up this afternoon.

4 MR. LASSOFF: I have two subpoenas out for
5 tomorrow, your Honor, for rebuttal. But if we finish this
6 afternoon I am perfectly ready to sum up.

7 THE COURT: All right. I would think you would
8 sum up this afternoon. The medical shouldn't be long.

9 MR. KAIN: It is an orthopedist. I wouldn't
10 think he would be that long.

11 THE COURT: All right. You have asked me in
12 one of your requests to charge to charge that any award
13 that should be made here would have to be reduced or commuted
14 to its present value. I am aware of that principle but
15 there is absolutely nothing in the record here for me on
16 which to do anything with respect to that.

17 MR. KAIN: Is your Honor talking about dis-
18 counting any award?

19 THE COURT: Yes.

20 MR. LASSOFF: There is in the record the
21 guaranteed annual wage, which shows what a longshoreman will
22 get, and it is our claim and it have been our claim in all
23 of these cases and it has always been allowed that way that
24 his future loss of earnings is \$16,660 a year until age
25 65.

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2 MR. KAIN: If your Honor please, the testimony
3 is to the end of the contract year, September 30, 1977.

4 MR. LASSOFF: We are not allowed to go increas-
5 ingwise, your Honor, because that is the last amount there,
6 but if we are going to go on contract years, the contract
7 has gone up every year.

8 THE COURT: It may have, but I can only go on
9 the basis of what has been submitted to me.

10 MR. LASSOFF: I am not asking for more than the
11 contract year. I am saying that is the standard.

12 THE COURT: You can argue whatever you want to
13 the jury, but I have nothing in front of me in connection
14 with what money can properly be invested at safely and
15 so forth. You ask me to take six per cent. I can't do that
16 without any proof in the record. There are economists
17 or actuarial experts who can be brought in here, but I
18 don't have anything on that, so how can I charge that.

19 MR. LASSOFF: Your Honor, I have brought an
20 economist in three times in a row to testify as to inflation.
21 The Court has refused to let me put on an economist in
22 these maritime cases because this circuit has said that it
23 is speculative. I had him here just three weeks ago with
24 Mr. Kain and Judge Bonsal refused to let the economist
25 testify.

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2 MR. KAIN: So did Judge MacMahon.

3 THE COURT: I am not complaining about the
4 inflation thing, but I have had a request to charge that it
5 is going to be commuted down to its present value and there
6 is nothing in the record at all on which I can make such a
7 charge to the jury. I am aware of the principle that if you
8 are giving an award for future lost earnings you do reduce
9 it down to its present value, but there is nothing before
10 me on which I can make such a charge.

11 MR. KAIN: In the past, your Honor, it has usually
12 been by agreement that it is discounted at five or six per
13 cent.

14 THE COURT: If you can get an agreement from
15 Mr. Lassooff to do that we can let the jury, if they are
16 going to make an award for damages, separate it and then
17 you can do it, if you get a consent on it. I think letting
18 the jury fool around with those figures is very difficult.
19 It is hard to understand even to those of us who know what
20 is involved with respect to that.

21 If you want a separate verdict as to how much
22 is awarded for pain and suffering, how much is awarded for
23 future lost earnings, and then we will agree that we will
24 commute it down to its present value, if you agree to that,
25 then we can do it that way.

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2 MR. LASSOFF: Your Honor, I have asked Mr.
3 Kain repeatedly to trade this off for inflation. He has
4 always refused to do so. I am not cooperating with Mr.
5 Kain in any way in this case, your Honor.

6 THE COURT: All I can do is go on the basis
7 of what is presented before me.

8 MR. KAIN: I think the only testimony in this
9 record, if I recall correctly, your Honor, is that the
10 year before his accident this plaintiff made \$14,000. I
11 don't think there is any other testimony as to what he made
12 two years before --

13 THE COURT: Yes, there was.

14 MR. LASSOFF: You asked him.

15 THE COURT: This is testimony, yes.

16 MR. LASSOFF: He said 7 or \$8,000, as I remember,
17 your Honor.

18 THE COURT: I have it written down here some
19 place in my notes.

20 1971, doesn't remember, he didn't work the
21 entire year. 1972, earned between 7 and \$8,000. 1973,
22 \$14,000. This is what my notes reflect. That was on
23 cross-examination by you, Mr. Kain. That is the
24 only testimony on that. We don't have anything on commuting
25 it to its present value, nothing with respect to inflation.

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2 I can't charge anything in that respect, even though I am
3 aware of the principles involved.

4 Have you had a chance to go over the charge?

5 MR. KAIN: To some extent, your Honor. I haven't
6 gone over it closely.

7 THE COURT: I suggest --

8 MR. KAIN: I have an objection to --

9 THE COURT: Most of Mr. Lassoff's charges re-
10 late to the Napoli case, which we agree is not involved
11 here, isn't that right?

12 MR. LASSOFF: Yes, your Honor. I am perfectly
13 happy with Judge Weinfeld's charge, which is not a Napoli
14 situation either, I don't believe.

15 THE COURT: There are a few of yours that I would
16 incorporate in addition to what Judge Weinfeld charged,
17 Mr. Kain.

18 MR. KAIN: Judge Weinfeld's charge, your Honor,
19 in spite of the fact that I don't know the context of it,
20 I don't know what the proof was and I don't know who testified
21 to what, but Judge Weinfeld's charge seems to me to be in
22 a case that is entirely distinguishable from this one. We
23 are not talking about an access hatch. I don't recall any
24 testimony in this case that the ship's officers had an
25 obligation to go down and inspect this cargo during the

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2 stowage. Even though there is testimony that the chief
3 mate was present in the hatch at the time of the accident,
4 I submit to your Honor if it is in effect a hidden hole or
5 trap, if you want to call it that, that doesn't, it seems
6 to me, constitute actual notice to the shipowner, because
7 good, bad or indifferent, it was created before then and
8 not visible to the men working there and certainly not visible
9 to an officer in the hatch, and it seems to me that all
10 that remains there is the question of constructive notice.

11 It seems to me from my reading of Judge Weinfeld's
12 opinion yesterday that he in effect put it up to the jury
13 to determine--

14 THE COURT: I expect to amplify upon the question
15 of constructive notice.

16 First of all it has got to be shown as to when
17 in fact the condition existed, and we have no proof here
18 as to that as far as I can see, but I would submit it to
19 the jury. First of all, the obligation is upon the plain-
20 tiff to establish when in fact this condition did exist,
21 if it did in fact exist, and was there reasonable oppor-
22 tunity for the defendant to have observed it during that
23 period of time and was its failure to make any such ob-
24 servation notice to it, so as to hold it responsible.

25 MR. KAIN: Your Honor has hit what I thought was

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2 the big objection to Judge Weinfeld's, no testimony as to
3 how long it had existed.

4 THE COURT: That is why I intend to submit it
5 to the jury. Do you have any objection to that?

6 MR. KAIN: Not as stated by your Honor, no, sir.

7 THE COURT: Mr. Lassoff?

8 MR. LASSOFF: I am going to sum up to the jury
9 that it was this way when it was loaded, they didn't put
10 any plywood or dunnage there. So that makes it an easy
11 case.

12 THE COURT: All right. I intend to incorporate
13 that in addition to what is in there.

14 All right.

15 (Luncheon recess.)
16
17

18 * * *
19
20
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24
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2 believe the plaintiff has rested.

3 MR. LASSOFF: If your Honor please, I think I
4 rested yesterday except for the doctor.

5 THE COURT: Put that --

6 MR. LASSOFF: I rest.

7 MR. KAIN: We rest.

8 THE COURT: Members of the jury, we will take
9 a short recess at this time.

10 (Jury left the courtroom.)

11 THE COURT: Maybe it is in some of the documents
12 that we have here, but in the interests of fairness I
13 didn't want to leave it out of this case. I was requested
14 to take judicial notice of his life expectancy.

15 MR. LASSOFF: Yes.

16 THE COURT: I was not asked to do anything with
17 respect to his work expectancy. You concede that his work
18 expectancy would be to age 65?

19 MR. KAIN: I will agree, your Honor, that that
20 is routinely used in this court.

21 THE COURT: We haven't had it in the case and
22 I didn't want both sides to rest without having that in here.
23 I thought it was only fair that that should be in here too.

24 All right. Plaintiff rests. You renew the
25 motions that you made when he originally rested and you

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2 restate them?

3 MR. KAIN: Yes, your Honor. Do you wish me to
4 restate them?

5 THE COURT: No. You renew them on the entire
6 case now?

7 MR. KAIN: Yes.

8 THE COURT: All right. I will reserve decision.
9 Are you ready to sum up?

10 MR. LASSOFF: Can we have a few minutes to get
11 these exhibits together, your Honor?

12 THE COURT: Oh, yes. How long do you expect
13 to be, Mr. Kain?

14 MR. KAIN: I would think 20 minutes to a half
15 hour at the most, your Honor.

16 MR. LASSOFF: About 45 minutes, your Honor. He
17 only has to talk about liability.

18 THE COURT: I assume he is going to cover both
19 issues. He certainly has by bringing the doctors here.

20 MR. LASSOFF: True, but in a different way, your
21 Honor.

22 THE COURT: All right. After you sum up I
23 think we ought to go over the charge. I am sure you know
24 what I am going to charge.

25 MR. LASSOFF: I think so, your Honor.

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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 PETER RUFFINO, :

6 Plaintiff, :

7 V. :

75 Civ. 4193

8 SCINDIA STEAM NAVIGATION CO., LTD., :

9 Defendant. :

10 -----x

11
12 October 15, 1976

13
14 BEFORE:

15 HON. LEE P. GAGLIARDI,

16 District Judge

17
18 A P P E A R A N C E S :

19 ZIMMERMAN & ZIMMERMAN, ESQS.

Attorneys for plaintiff,

20 BY: MARTIN LASSOFF, ESQ.,

21 Of Counsel

22 HAIGHT, GARDNER, POOR & HAVENS, ESQS.

Attorneys for defendant,

23 BY: WILLIAM P. KAIN, JR., ESQ. and

24 JAMES M. HAZEN, ESQ.,

25 Of Counsel

1 jhjb 2

2 (Trial resumed.)

3 (In open court - jury present.)

4 THE COURT: Members of the jury, naturally the
5 reason for that announcement is that you will not be dis-
6 tracted from people walking in and out while I am delivering
7 this charge to you because it is, as you know, most important
8 that you fully understand the principles of law that I am
9 about to announce to you.

10 We are at the point in this reasonably brief trial
11 where you are soon to undertake your final function as
12 jurors, which as I told you at the time of your original
13 selection is to determine the disputed fact issues in this
14 case.

15 You, the members of the jury, are the sole and
16 exclusive judges of the fact. You pass upon the weight of
17 the evidence, you determine the credibility of the witnesses,
18 you resolve such differences as there may be in the testimony,
19 and you draw whatever reasonable inferences may be warranted
20 from the facts as you determine the facts to be.

21 My function at this point is to instruct you as to
22 the law. It is your duty to accept these instructions of
23 law and to apply them to the facts as you find the facts to
24 be.

25 In your determination of the facts you are to rely

1 jhjb 3

2 upon your own recollection of the evidence. Anything that
3 the lawyers may have said during the course of this trial,
4 included in a question put to a witness or advanced in
5 summation before you, is not to be taken in place of or
6 in substitution of your own independent recollection.

7 And so too if during the course of these instruc-
8 tions I should make any statement of fact which does not
9 accord with your own recollection, again, you are to rely
10 on your own independent recollection, which governs at
11 all times.

12 Now, the plaintiff brings this action to recover
13 damages which he claims he sustained as a result of the
14 alleged negligence of the owner of the vessel on which he
15 was working as a holdman in unloading cargo from the ship.
16 Plaintiff was not employed by the ship but by Pittston
17 Stevedoring, with whom the ship owner had contracted to do
18 the stevedoring work on the ship, that is, unloading it
19 while it was in port.

20 As an employee of a stevedore, Pittston, in order
21 to carry on his work of unloading the ship, the plaintiff
22 had to do this on board the ship. Accordingly, he was
23 what the law terms an invitee of the ship owner, and as
24 such the ship owner was under the duty to exercise reason-
25 able care to provide him with a reasonably safe place

1 jhjb 4

2 within which to work. This duty of the ship owner was
3 entirely independent of and separate from any duty that
4 Pittston, his employer, owed to him.

5 Now, of course, you understand that since the
6 ship owner is a corporation it acts through its officers
7 and agents, and the ship owner is responsible for the acts
8 and conduct of such officers and agents performed or omitted
9 to be performed within the scope of their respective duties.

10 The ship owner has denied that in any respect it
11 failed in any duty that it owed to the plaintiff. To the
12 contrary, it contends that whatever injuries plaintiff sus-
13 tained, if any, they were due solely and only to his own
14 carelessness and negligence or solely that of his employer,
15 in which event, if you find this to be so, the plaintiff may
16 not recover.

17 Additionally, the ship owner contends that even
18 if you should find that it was negligence, and accordingly
19 his damages should be reduced to the extent the negligence,
20 whatever negligence there may have been on his part, con-
21 tributed to the happening of the accident.

22 Now, this has been, as I said before, a relatively
23 short case. Counsel have adequately in their summations to
24 you yesterday reviewed the contentions with respect to the
25 testimony adduced and what reasonable conclusions you should

1 jhjb 5

2 draw from that. I do not intend to review the evidence in
3 this case or to go over the list of the witnesses, which
4 must be all clear in your minds, since we started this case
5 I guess last Tuesday.

6 I would like to at this point indicate to you, as
7 I did at the very beginning, that you should not try and
8 determine what opinion I might have as to the merits of this
9 case or the credibility of any witness. In every way I have
10 attempted to mask from you any opinion that I might have.
11 You noted along the way that I did ask questions, a few
12 questions along the way, and the fact that I asked those
13 questions should not influence you in any way as to what you
14 think I feel how you should decide this case. If you think
15 that you gleaned some opinion as to how I think you should
16 decide this case you should disregard it entirely. As I
17 have indicated before, you are the sole judges of the facts
18 in this case.

19 Now, with respect to certain principles of law,
20 the mere fact that an accident happened to the plaintiff
21 does not make the ship owner liable to him. The mere happen-
22 ing of an accident is no evidence of negligence. You must
23 find for the defendant unless you find that an accident
24 happened to the plaintiff and that it was caused by the
25 ship owner's negligence and that any injuries he sustained

1 jhjb 6

2 may have been a result, a proximate cause resulting or
3 flowing from the accident that occurred.

4 In addition, the ship owner was not an insurer
5 of the safety of the plaintiff and was not required to
6 provide an accident-proof ship. The ship owner may be
7 held liable only if the plaintiff establishes by a fair
8 preponderance of the credible evidence that the ship owner
9 was negligent, that is, that it violated its duty to exer-
10 cise reasonable care to provide plaintiff with a reasonably
11 safe place to work.

12 In that regard, the ship owner has no duty to
13 supervise any loading or discharging work performed by
14 any stevedoring company of its employees, including the
15 plaintiff.

16 Now, I have indicated to you that the burden of
17 proof is upon the plaintiff to establish negligence by a
18 fair preponderance of the credible evidence and you naturally
19 ask yourself what is a fair preponderance of the credible
20 evidence. This refers to the quality of the evidence, the
21 weight of the evidence, and not to the number of witnesses.

22 If you find that the evidence presented by the
23 plaintiff, who has the burden of proof with respect to
24 establishing negligence on the part of the defendant, is
25 more persuasive and more convincing than that opposed to

1 jhjb 7

2 it, then the plaintiff has sustained his burden. In short,
3 if his evidence persuades you that the occurrence of an
4 essential fact was more likely or probable than its non-
5 occurrence, then he has met this burden.

6 On the other hand, if upon a review of all of the
7 evidence you find that the evidence is evenly balanced or
8 that the evidence is in favor of the defendant, then the
9 plaintiff has failed to sustain his burden and your verdict
10 must be for the defendant.

11 Now, with respect to burden of proof, later on I
12 will discuss with you the question of contributory negli-
13 gence. On that issue the defendant has the burden of proving
14 contributory negligence and the same principle applies to
15 that as applies with respect to the plaintiff's initial
16 burden of proving negligence on the part of the defendant.

17 Now, what is negligence? Negligence is doing a
18 thing or failing to do a thing which a reasonably careful
19 and prudent person would have done under like or similar
20 circumstances.

21 Basic to the plaintiff's recovery, if there is
22 to be a recovery on the part of the plaintiff, is a finding
23 that in fact a dangerous condition existed on this ship.
24 Plaintiff has the burden of proving that the ship owner
25 had notice of any dangerous condition that may have existed

1 jhjb 8

2 on board the vessel in the area in which the plaintiff was
3 performing his work. If the plaintiff has not proved
4 notice of such a condition to the ship owner then your
5 verdict must be for the ship owner.

6 I apologize to you. I omitted something when I
7 defined the burden of proof. It's plaintiff's claim in
8 this case that the defendant was negligent in that a dan-
9 gerous condition existed in the area where the plaintiff
10 was working when he claims he met with his accident, that
11 defendant had actual or constructive notice of the condition
12 and failed to correct the condition or warn plaintiff of it.

13 Defendant denies that such condition existed and
14 claims that even if it did exist it had neither actual nor
15 constructive notice thereof.

16 I am going to retrace my steps a moment because
17 I had omitted that and I will retrace them this way:

18 The definition of negligence. Negligence is
19 doing that or failing to do that which a reasonably care-
20 ful or prudent person would have done under like or similar
21 circumstances, and basic to the plaintiff's recovery is a
22 finding that in fact a dangerous condition did exist.

23 Plaintiff in addition to having the burden of
24 proving that a dangerous condition existed has the burden
25 of proving that the ship owner had notice of the dangerous

1 jhjb 9

2 condition, if such existed on board the vessel. If the
3 plaintiff has not proved notice of such condition then your
4 verdict must be fore the ship owner.

5 Now, it is my recollection, and I caution you
6 again that it's your recollection that controls at all
7 times, with respect to the question of actual notice,
8 that the chief mate was present generally during the load-
9 ing of the ship but that he had no actual notice of the
10 condition of the cargo in the wing of the hatch where the
11 plaintiff claims he sustained his accident. Again, it's
12 your recollection that governs at all times.

13 With respect to notice of the condition I men-
14 tioned the term constructive notice before. Let me define
15 that term for you now.

16 A defendant would have constructive notice of a
17 dangerous condition if in fact such a condition existed
18 and if it existed for such a period of time that the defen-
19 dant had a reasonable opportunity and a duty to observe it.
20 That's what is meant by constructive notice.

21 It was the duty of the ship owner to exercise
22 reasonable care under the circumstances to place the ship
23 on which the stevedore work was to be done and the equipment
24 and appliances aboard ship in a reasonably safe condition,
25 such that an expert, an experienced stevedoring contractor,

1 jhjb 10

2 would be able by the exercise of reasonable care under the
3 circumstances, to load or discharge the cargo, as the case
4 may be, in a workmanlike manner and with reasonable safety
5 to persons and property.

6 With respect to the defendant's contentions,
7 defendant contends that plaintiff was engaged in the dis-
8 charge of his ordinary duty, which called for him to use
9 care for his own safety, that he was an experienced long-
10 shoreman, that the accident was caused solely and only by
11 his own carelessness or solely by the negligent conduct of
12 the stevedores, which if you do so find would exonerate
13 the defendant from any liability.

14 However, if under the principles that I have set
15 forth to you you find that the ship owner was negligent,
16 and further find that the stevedore was also negligent,
17 that is, if their negligence was concurrent, and that the
18 joint negligence was a proximate cause of the accident as
19 a result of which plaintiff sustained his injury, in that
20 event the ship owner would be liable to plaintiff.

21 I have defined for you, again, the term negli-
22 gence and what that is and there is no need to repeat it
23 here.

24 If you find that the plaintiff himself or the
25 stevedores or both were solely responsible in causing the

1 jhjb 11

2 accident and defendant ship owner in no respect contributed
3 thereto the ship owner or defendant is free from liability.
4 You are called upon to decide whether in all the circum-
5 stances plaintiff has sustained the burden of proving that
6 defendant breached a duty to plaintiff to exercise reason-
7 able care to furnish him with a reasonably safe place in
8 which to work.

9 Now, this requires you to pass upon the credi-
10 bility of witnesses. In the search for truth you use, with
11 respect to the determination of the credibility of witnesses,
12 your everyday plain common sense. As I often tell jurors,
13 when you walk in the door of the courtroom you do not leave
14 your common sense outside the courtroom door.

15 I gave you some preliminary instructions with
16 respect to credibility. I indicated to you that that would
17 be one of your primary functions in connection with sitting
18 and observing the witnesses on the stand. It's been evident
19 to me and to the counsel also, as they pointed out to you,
20 that you have paid full attention to the proceedings that
21 have gone on here and have performed your duties in that
22 respect in a most admirable way.

23 Now, you have seen the witnesses on the stand,
24 you have understood their manner of testifying and their
25 demeanor, and what you do is you ask yourselves whether the

1 jhjb 12

2 witnesses did tell a forthright, truthful story. Did a
3 witness appear to be accurate? Did it appear that he was
4 biased or prejudiced? If a witness has an interest in the
5 outcome of a case you may take that into consideration in
6 passing upon his credibility.

7 The plaintiff is obviously an interested witness.
8 In that circumstance you may take that into account. How-
9 ever, it by no means follows that simply because a person
10 has an interest in the case he is not capable of telling a
11 truthful story.

12 In addition, with respect to that, in this case
13 it was peculiarly within the power of the plaintiff to call
14 his treating physician, Dr. Frank Guarino. Now, the failure
15 to call a witness under the control of a particular party
16 may give rise to an inference that the witness' testimony
17 would have been unfavorable to the party who failed to call
18 him.

19 If you find that any witness, either witnesses
20 for the plaintiff or for the defendant, willfully testified
21 falsely as to any material fact you have a right to reject
22 the testimony of that witness in totality or to accept only
23 that part or portion which commends itself to you or which
24 you find corroborated by other evidence in the case.

25 Now, we have had expert testimony in this case

1 jhjb 13

2 and there are certain rules with respect to that. The
3 rules of evidence ordinarily do not permit witnesses to
4 testify as to opinions or conclusions. An exception to
5 this rule exists as to those whom we call expert witnesses.
6 Witnesses who by education and experience have become ex-
7 pert in some art, science, profession or calling may state
8 their opinions as to relevant and material matters in which
9 they profess to be expert and may also state their reasons
10 for such opinions.

11 In this case you have heard expert testimony from
12 the doctors and on each side of the case from persons who
13 profess to be expert with respect to cargo loading and
14 storage and unloading and so forth.

15 You should consider each expert opinion received
16 in this case and give it such weight as you think it de-
17 serves. If you should decide the opinion of an expert is
18 not based upon sufficient education and experience or if
19 you should find that the reasons given in support of the
20 opinion are not sound or if you feel that it is outweighed
21 by other evidence you may disregard the opinion.

22 However, should you find that the opinion and the
23 reasons given in support thereof are sound and credible, you
24 may consider that opinion together with all the other evi-
25 dence before you in reaching your determination as to the

1 jhjb 14

2 disputed issues in this case.

3 Now, it's necessary for me to instruct you entirely
4 on the law and therefore it is necessary for me to inform
5 you as to the law with respect to damages.

6 You reach this question only if you find on all
7 the evidence that the plaintiff has sustained his burden
8 that the ship owner negligently breached its duty to supply
9 him with reasonably safe place to work. Of course, if he
10 has failed to do so, as I have already told you, that would
11 end the case and you would return a verdict for the defen-
12 dant.

13 Now, there is, of course, no magical formula or
14 mathematical formula that can be used on the question of
15 damages. Damages must be purely and simply compensatory
16 and reasonable, neither inadequate nor excessive.

17 Plaintiff, if you find he has sustained his burden
18 of proof, would be entitled -- incidentally, he also has
19 the burden of proof of establishing by a fair preponderance
20 of the credible evidence the injuries that he sustained --
21 but if he has sustained his burden of proof both as to negli-
22 gence and as to the injuries sustained, he would be entitled
23 to the following: Such sum as you may find reasonable to
24 compensate him for the pain and suffering both from the time
25 of the accident up to date and in the future, taking into

1 jhjb 15

2 account the extent and nature of his injuries, including
3 permanency, if any, and any loss of earnings, including
4 future earnings, provided they are shown with reasonable
5 certainty and are not merely speculative in character.
6 He is entitled to the loss of earnings up to the present
7 time if you should find that he is entitled to them and
8 such as you find that he may be entitled to with respect
9 to the balance of his work expectancy and his life ex-
10 pectancy.

11 Now, during the course of the trial you heard me
12 take judicial notice of the fact that the plaintiff has a
13 life expectancy at his present age of 28.56 years. I also
14 took judicial notice of the fact that he had a work ex-
15 pectancy up to the age of 65 years of age. You may take
16 these things into consideration and it is your determination
17 as to whether or not he would live to be the age that's
18 given in the life expectancy tables and whether or not he
19 would continue to work up until the age of 65.

20 Now, the amount of damages awarded for loss of
21 earnings is controlled by what the evidence shows concerning
22 his earning capacity before and after the accident. In
23 this respect you had presented to you his earnings for the
24 three years immediately prior to his injury, and while I
25 say it's your recollection of the evidence that governs,

1 jhjb 16

2 I believe there was testimony that in 1971 he doesn't re-
3 member his earnings, that he didn't work the entire year,
4 in 1972 he earned seven to \$8,000 in that year, and in
5 1973 he earned \$14,000 for that year and worked the entire
6 year, and you have heard testimony with respect to the
7 contract between the ILA and the ship owners association.

8 Now, even if you should determine that the plain-
9 tiff is entitled to damages, you must consider that he, if
10 possible, is obliged to mitigate those damages by seeking
11 and accepting such employment as he is reasonable able to
12 perform. In this respect you may take into consideration
13 the medical testimony as to whether or not he was able to
14 return to some form of work. If plaintiff was able to re-
15 turn to work as determined by you and he failed to you must
16 take that into consideration in connection with whatever
17 prospective earnings he may have earned and, of course, he
18 should not be awarded any damages for any prospective earn-
19 ings that he might have been able to have earned.

20 You may, if you arrive at the issue of damages,
21 make an award only for those items which you find were
22 proximately caused in whole or in part by the accident.
23 In short, the defendant cannot be charged for any injury
24 or physical condition not attributable to the accident.

25 If you conclude that the plaintiff has sustained

1 jhjb 17

2 his burden of proof with respect to the negligence of the
3 defendant and have determined the amount of damages that
4 he is entitled to your task is not ended. While the plain-
5 tiff did not assume the risk of an unsafe place to work,
6 he was, however, under a duty to exercise reasonable care
7 for his own safety.

8 Accordingly, should you find that the dangerous
9 condition existed and that the defendant had either actual
10 or constructive notice of the condition, as I have defined
11 those terms for you, and should you find that the accident
12 was contributed to in part by plaintiff's own negligence,
13 that is, failure to exercise reasonable care for his own
14 safety, then to the extent that he contributed to the
15 happening of the accident the damages would be reduced
16 accordingly.

17 Let me give you an example, several examples,
18 because I don't want to indicate to you that I have any
19 opinion one way or the other with respect to this. Assume
20 that you should find that his total damages is \$1. And
21 again, I am saying I am giving any amount, but I think
22 that's the easiest way to do it. Assume you should find
23 all these other things that I have told you that you must
24 find before he could recover. Assume that you should find
25 that his damages is \$1 and that he was 10 per cent negligent.

1 jhjb 18

2 You would then reduce the amount of your award by 10 per
3 cent. If you found that he was 25 per cent negligent, then
4 you would reduce the amount that you would find, the \$1,
5 you would reduce it by 25 per cent. In other words, he
6 would then be entitled to 75 cents. If he were 50 per cent
7 negligent and you found the damages were \$1 he would be
8 only entitled to 50 cents. If you found that he was 75
9 per cent negligent you would reduce the \$1 so that he would
10 recover only 25 cents.

11 So I say if you find that there was negligence
12 and liability on the part of the ship owner in connection
13 with the principles that I have set forth to you, and if you
14 should further find that the plaintiff contributed to the
15 happening of the accident, any award that you should give
16 to him has to be reduced by the extent that you would find
17 him contributorily negligent.

18 Now, on the question of contributory negligence,
19 the burden of proof of establishing contributory negligence
20 is upon the defendant. If you should find that the acci-
21 dent was caused by the negligence of the defendant, whether
22 or not the plaintiff was contributorily negligent thereto --
23 the burden of proof, I say, is upon the defendant to es-
24 tablish that -- unless the defendant has sustained that
25 burden, then there would be no diminution in the amount of

1 jhjb 19

2 any award that you should make.

3 Now, I told you at the outset of this case that
4 you must decide it fairly and impartially, without sympathy,
5 fear, favor, prejudice or bias to one side or the other.
6 You should not be concerned and I am sure you will not be
7 concerned with who the plaintiff is or what the defendant
8 is. The fact that the defendant is a corporation must not
9 be taken into account in your deliberation at all. All
10 litigants, whether individuals, corporations, stand as
11 equals before the bar of justice. It matters not whether
12 they are individuals, corporations or the government of the
13 United States. All are equal in litigation.

14 Your duty is to try the issues in the case fairly
15 and impartially and without fear or favor. Each juror is
16 entitled to his or her own opinion, but you are required
17 to exchange your views and discuss the matters with your
18 fellow jurors. It is your duty to consider and discuss the
19 evidence and review the testimony of the witnesses.

20 Now, if you have a point of view which differs
21 from that of your fellow jurors ~~in~~ upon discussion and
22 further consideration you are persuaded that your point of
23 view should yield in the light of the evidence and the law,
24 there is no reason why you should not exchange an originally
25 held point of view, provided, however, that your ultimate

1 jhjb 20

2 vote always expresses your conscientious judgment as to how
3 the case should be decided.

4 To return a verdict it must be unanimous. All
5 members of the jury must agree upon the verdict that's to
6 be rendered here.

7 If for any reason you wish any of the documents
8 or exhibits that are in evidence produced for you you may
9 havethem by sending a note by your foreman through the
10 marshal. If for any reason you want any of the testimony
11 reread all you have to do is send a note indicating what
12 portion of the testimony you would like reread and we will
13 arrange to bring you back here in court and have it reread
14 by the court reporter.

15 All communications between the court and the jury
16 will be done either in writing by any note that you may
17 send me or orally here in open court.

18 In connection with how you conduct your delibera-
19 tions, that's entirely up to you. It's normally a custom,
20 but by no means required, that the person occupying the
21 first seat in the jury box is the fore person of the jury.
22 However, you may vote and elect or select your own fore
23 person and conduct your deliberations in any manner that
24 you see fit to do.

25 Now, the way in which you report your verdict,

1 jhjb 21

2 and the fact I put one before the other doesn't mean any-
3 thing at all. Your verdict will be reported as follows:
4 We the members of the jury unanimously find for the plain-
5 tiff in the amount of blank dollars. Or -- and as I say,
6 I could have put it either way -- we the members of the
7 jury unanimously find in favor of the defendant. That's
8 the way your verdict will be reported one way or the other.

9 Nothing that I have said in any of these in-
10 structions is to indicate to you any opinion that I may
11 have as to how you should find in this case. That's solely
12 for you. Please don't single out any one of these in-
13 structions as stating the law alone. Take them all into
14 consideration.

15 Counsel have the opportunity to make any exceptions
16 or requests with respect to any charge that I have made and
17 I suggest that probably the best way to do this is for you
18 to retire and we will take it here in open court. That's
19 probably the best way.

20 So if you will just retire for a moment, then we
21 will have you back in here and see whether I have to give
22 you any further instructions.

23 (Jury left the courtroom.)

24 THE COURT: Mr. Lassoﬀ, any exceptions?

25 MR. LASSOFF: No exceptions, no requests, your

1 jhjb 22

2 Honor.

3 THE COURT: Mr. Kain?

4 MR. KAIN: Your Honor, I have no exceptions. I
5 would ask your Honor to charge in accordance with my re-
6 quests numbers 9 and 10, and in that connection, not re-
7 ferring necessarily to the specific language, but I would
8 ask your Honor to charge the jury that the duty to provide
9 a reasonably safe place to work pertains only when the
10 hatch is first turned over to the stevedore and that any
11 conditions created thereafter in the hatch by the stevedore
12 or its employees do not result in liability upon the defen-
13 dant ship owner.

14 What I am concerned about, your Honor, is the
15 jury might get the idea of a particular duty even though
16 the hatch has been turned over to the stevedore, that the
17 ship owner has a particular duty throughout the discharge
18 to furnish a reasonably safe place to work.

19 THE COURT: Under the circumstances of this case,
20 haven't we covered it by my saying that the sole claim of
21 negligence in here was the existence of the condition at
22 the time that the plaintiff claims he was injured? I think
23 I have covered it that way.

24 MR. LASSOFF: I think so, your Honor.

25 THE COURT: I just want to hear Mr. Kain. I think

1 jhjb 23

2 I have covered it that way, Mr. Kain.

3 MR. KAIN: I do recall your Honor saying that.
4 At least, that's an impression I had from your Honor's
5 charge, they might think this duty was continuing. It is
6 true that your Honor did say that the claim --

7 THE COURT: The claim solely was that the condi-
8 tion was there as claimed by the plaintiff and I think any-
9 thing else --

10 MR. KAIN: Yes, I do recall that.

11 THE COURT: All right, gentlemen. We will have
12 the jury back in and excuse the alternate.

13 Have you gentlemen got all your exhibits together?

14 MR. LASSOFF: I have mine, your Honor.

15 MR. KAIN: Yes.

16 THE COURT: All right.

17 (Jury present.)

18 THE COURT: I have no further instructions to give
19 you. I have a pleasant and unAleasant duty to perform, how-
20 ever.

21 I am happy and it's pleasant to see that we are
22 all together still, the jury has remained intact, but the
23 unpleasant part is that I am going to have to separate the
24 alternate.

25 It's been most necessary that you be present. I

1 jhjb 24

2 appreciate your cooperation with the court. This has been
3 a remarkable jury. You have all been here on time when I
4 have asked you to be and I kept you waiting a little bit
5 and I appreciate the cooperation of all of you, particularly
6 your attention to this case.

7 (Alternate juror excused.)

8 (Marshal sworn.)

9 (At 10:35 a.m. the jury retired to deliberate
10 upon a verdict.)

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329a

DEFENDANT'S NOTICE OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

PETER RUFFINO,

Plaintiff,

NOTICE OF MOTION

- against -

75 Civ. 4193 (LPG)

SCINDIA STEAM NAVIGATION CO., LTD.,

Defendant.

-----X

S I R S :

PLEASE TAKE NOTICE that the undersigned attorneys for defendant herein, upon all papers and proceedings heretofore filed and had herein and upon the affidavit of William P. Kain, Jr., sworn to the 20th day of October, 1976, will move this Court before the Honorable Lee P. Gagliardi, U.S.D.J. presiding, at the Federal Courthouse, Foley Square, New York, N. Y., on the 2nd day of November, 1976 at 4:00 p.m. or as soon thereafter as counsel may be heard, for an order pursuant to Rule 50(b) of the Federal Rules of Civil Procedure granting defendant's motion for a directed verdict at the close of the evidence upon which decision has been reserved, and entering judgment for the defendant notwithstanding the jury verdict and granting defendant such other, further and different relief as may be just and proper.

Dated: New York, New York
October , 1976

Yours, etc.,

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant

By

A Member of the Firm
One State Street Plaza
New York, New York 10004

330a

DEFENDANT'S NOTICE OF MOTION

TO:

ZIMMERMAN & ZIMMERMAN, ESQS.
Attorneys for Plaintiff
160 Broadway
New York, N. Y. 10038

331a

AFFIDAVIT OF WILLIAM P. KAIN, JR. IN SUPPORT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PETER RUFFINO,

Plaintiff,

- against -

75 Civ. 4193
(LPG)

SCINDIA STEAM NAVIGATION CO., LTD.,
Defendant.

-----x
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

WILLIAM P. KAIN, JR., being first duly sworn,
deposes and says:

That he is an attorney duly admitted to practice before this Court and is a member of the firm of Haight, Gardner, Poor & Havens, attorneys for defendant herein. This affidavit is submitted in support of defendant's motion pursuant to Rule 50(b) of the Federal Rules of Civil Procedure that this Court grant defendant's motion for a directed verdict upon which it reserved decision and that this Court enter judgment in defendant's behalf, notwithstanding the jury verdict in plaintiff's favor. Defendant respectfully submits that, without weighing the credibility of the witnesses, there can be but one reasonable conclusion as to the proper judgment in this case; that is, judgment for the defendant shipowner.

This case was tried before the Court with a jury on October 12, 13, 14 and 15, 1976. At the end of the plaintiff's evidence deponent moved to dismiss the complaint for failure to present a prima facie case of

AFFIDAVIT OF WILLIAM P. KAIN, JR.

negligence and deponent again moved at the close of all the evidence for a directed verdict in the defendant's favor. This Court reserved decision on both motions. At the end of the 3-1/2 day trial of this case, the jury returned a verdict for the plaintiff in the amount of \$60,000. Since the within motion is addressed solely to the issue of liability, only the testimony of fact witnesses and maritime experts will be reviewed.

Plaintiff testified that he was working as a longshoreman in the employ of Pittston Stevedoring Corp. on board the m/v Jalajyoti at Pier 12, Brooklyn, New York, on January 29, 1974. He testified that he and the other men in his gang proceeded to the No. 6 hatch at approximately 8:10 or 8:15 a.m. At that time the ship's crew opened the hatch by means of the ship's cargo gear and plaintiff and the other men in his gang descended into the No. 6 upper 'tween deck at approximately 8:30 a.m. He further testified that the No. 6 'tween deck contained cases of tea strapped on skids which had been stowed in the square of the hatch and in the inshore wing. According to plaintiff, on top of the skids of tea in the inshore wing of No. 6 'tween deck were rolls of rugs stowed five or six high to a height of approximately three feet. Plaintiff testified that in the course of the discharge of the rugs he was required to climb upon the stowage to hand rugs down to the other longshoremen so they could place them in slings for discharge.

Plaintiff testified that at the time of his accident he was handing the rugs down with his partner, Mr. Green, when he had to back up to position himself. His left foot sank into a hole in the stow when a rug bent

AFFIDAVIT OF WILLIAM P. KAIN, JR.

underneath him. Both the rug and plaintiff's foot went down. Plaintiff claims to have lost his balance thereby, falling backward between the stow of cargo and the skin of the ship on the inshore side, landing on the deck of the No. 6 'tween deck. He admitted on his direct examination that he saw no hole in the stow. He also claimed that the skids of tea were stowed with numerous spaces between them and claimed that there was no dunnage or plywood placed on top of the skids of tea as flooring under the stowage of rugs. Plaintiff admitted that during the discharge of cargo that morning there were no ship's officers or crew in No. 6 hatch. He also insisted that there was no shoring or fencing supporting the stow of rugs in the inshore wing.

Mr. Green testified that the entire wing was stowed with pallets of tea and that there was no space between the pallets stowed in the inshore wing and the skin of the ship. He also testified that the rolls of rugs were stowed in the inshore wing near the square of the hatch. According to Mr. Green, some loose rolls of rugs were in the square of the hatch. He further testified that it was necessary for him and Mr. Ruffino to climb up on the tea which was under the rugs and then to climb up on top of the stowage of rugs. He claimed that Mr. Ruffino stepped on the end of a rug on top of a chest of tea, which gave way, causing him to fall approximately six feet into a hole in the stow. Mr. Green claimed that the hole in the stow was approximately four feet in diameter and six feet deep. He admitted, however, that he did not see this hole in the stow prior to plaintiff's accident while he and Mr. Ruffino were discharging the

AFFIDAVIT OF WILLIAM P. KAIN, JR.

rugs. Indeed, his testimony was that the alleged hole in the stow was covered by cargo on all sides.

Plaintiff also called Mr. Saverio Anastasia as a stevedoring expert. Mr. Anastasia testified that he had been a ship's foreman in charge of gangs of longshoremen for approximately 30 years and was currently a ship's foreman for Universal Maritime Service, Inc. at Pier 6, Bush Terminal, Brooklyn, N. Y. He testified that it was his job to supervise loading and discharging to see that the longshoremen were safe and that the work proceeded properly. He further testified that it was necessary before loading bales of rugs on top of pre-palletized tea to lay plywood or dunnage to make a solid working floor on top of the tea. He also testified that in loading skids of tea strapped on pallets spaces in the stow would be inevitable. Mr. Anastasia admitted that his experience was limited entirely to the Port of New York and that he had absolutely no knowledge whatsoever of any custom or practice for stevedoring operations in Indian ports.

The above three witnesses were the only witnesses called on the issue of liability by plaintiff. None of their testimony in any way tended to establish any duty on the part of the shipowner to supervise the loading in India or any custom or practice probative of a standard of care that the shipowner could have allegedly violated while the vessel was loading in India. It is submitted that plaintiff showed no duty of the shipowner to supervise nor did he show either actual or constructive notice to the ship, as he was required to do. As a result, plaintiff failed to establish a prima facie case of negligence on the part of the shipowner in connection with the loading of the cargo

AFFIDAVIT OF WILLIAM P. KAIN, JR.

at No. 6 'tween deck and his complaint should have been dismissed at the close of plaintiff's evidence.

After this Court reserved decision on defendant's motion to dismiss at the end of plaintiff's case, the defendant called fact and expert witnesses on its behalf. Since the within motion is premised upon the position that plaintiff failed to establish negligence as a matter of law without taking into account the credibility of witnesses, Mr. De Schino's testimony to the effect that Mr. Green told him a different story than the one to which he testified, will not be dealt with here. Defendant also called as a witness Capt. Ullhas A. B. Rao who was Chief Officer of the m/v Jalajyoti during the voyage in question. After identifying the ship's log book for January, 1974, the cargo stowage plan, the capacity plan and the measurement plan of the vessel, Mr. Rao testified as to the cargo stowed in the No. 6 'tween deck of the vessel during the voyage in question. Condiments were stowed against the forward bulkhead. In the forepart of the hatch square a few skids of tea and rolls of carpets were stowed. In the afterpart of the hatch square cargo destined for ports other than New York was stowed. In the forward third of the hatch square, 96 rolls of long carpets were stowed weighing ten tons. No carpets were stowed in the inshore wing, only skids of tea. The skids upon which the tea was stowed were four feet by four feet and contained approximately 16 chests of tea which were fifteen to eighteen inch cubes. The tea was stowed in the port wing and in a portion of the square. Some tea was also stowed a short distance into the starboard wing. Mr. Rao testified that he received no complaints or reports of improper

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stowage from the longshoremen or ship's officers in Calcutta when the cargo was loaded. He also testified that the ship's officers and crew did not assist in cargo operations in India or in New York; that an independent stevedore's laborers loaded the cargo in the Port of Calcutta, India, under the supervision of the stevedore's superintendents. Mr. Rao testified that the ship's officers did not direct the methods which were used by the longshoremen in loading the vessel in India. He also testified that during the voyage from Calcutta to New York he periodically inspected the cargo holds (every two or three days) and found no shifting of the cargo. After the Jalajyoti arrived in the Port of New York the discharging was done by Pittston Stevedoring Corp. Mr. Rao further testified that the ship's officers and crew did not assist in the discharging operations; that they did not participate in the actual work of discharging the vessel, and the ship's officers did not supervise the longshoremen in doing their work. Again, Mr. Rao received no reports or complaints from anyone regarding the stowage of the vessel's cargo. He did not witness plaintiff's accident and received no report of it. He also testified that it was a routine practice on board the ship for an entry to be made in the log book in the event a report of injury was received.

The Chief Officer testified that the use of plywood or dunnage as a floor on top of the skids of tea was necessary and that he ordered the contract stevedore in India to lay plywood or dunnage on top of the skids of tea. He also testified that an independent supply company would provide dunnage; that the stevedore would put it into place during loading in India.

AFFIDAVIT OF WILLIAM P. KAIN, JR.

The defendant shipowner also called Capt. William F. Wheeler, a maritime expert, to testify in its behalf. Capt. Wheeler testified that the testimony of plaintiff and his fellow longshoreman as to a hole in the stow approximately four feet in diameter was impossible; that assuming such a hole in the stow initially the loose chests of tea or other cargo would have shifted into the hole during the voyage. Capt. Wheeler also testified that similar rolls of carpets he had seen in his experience had cores and would not have bent under plaintiff's weight.

It is submitted that at the close of all the evidence no testimony whatsoever was presented either by plaintiff's witnesses or the witnesses called by the shipowner which would permit an inference that the shipowner had any notice, actual or constructive, of the alleged defective stowage in the No. 6 'tween deck of the m/v Jalajyoti. There was no real controversy between counsel for the parties that negligence could be chargeable to a shipowner only if he had actual or constructive notice of the existence of any defect in the stow and nevertheless allowed it to exist. Both plaintiff and his fact witness testified that they did not notice any hole in the stow while they were working cargo. Surely, the shipowner cannot be charged with notice of a condition that the longshoremen actually working the cargo could not ascertain. The evidence established and this Court correctly charged the jury that the shipowner had no duty to supervise the stevedore companies or their longshoremen employees during either loading or discharge. Likewise, there was no evidence that the shipowner was required to have a ship's officer inspecting minute details of the stow or to be

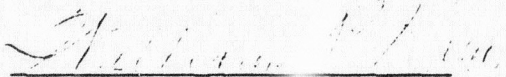
AFFIDAVIT OF WILLIAM P. KAIN, JR.

present at the No. 6 'tween deck at all times during loading to insure that the Indian longshoremen performed their work properly.

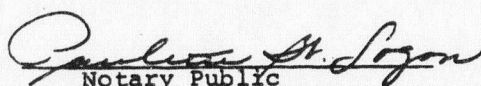
There was, furthermore, no evidence that the shipowner had any duty to supply a dunnage or plywood floor over the pallets of tea upon which the rolls of rugs were stowed.

Based on the foregoing, there was no evidence in this case whatsoever of any negligence on the part of the shipowner. When this Court let this case go to the jury it merely allowed the jury to speculate on the shipowner's liability without any evidence on which to ground a finding of negligence. As a result, the jury verdict should be set aside, and this Court should grant defendant's motion for a directed verdict and enter judgment notwithstanding the jury verdict.

WHEREFORE, it is respectfully requested that this Court grant a directed verdict in favor of the defendant shipowner and enter judgment in defendant's favor notwithstanding the jury verdict and that this Court grant to defendant such other, further and different relief as may be just and proper.


WILLIAM P. KAIN, JR.

Sworn to before me this
20th day of October, 1976.


Notary Public

PAULETTE W. LOGAN
Notary Public, State of New York
No. 241600737
Qualified in Kings County
Cert. filed in Kings County
Commission Expires 12/31/1978

AFFIDAVIT OF MARTIN LASSOFF IN OPPOSITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER RUFFINO,

Plaintiff,

75 Civ. 4193
Judge Gagliardi

-against-

SCINDIA STEAM NAVIGATION CO., LTD.,

Defendant.

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

MARTIN LASSOFF, being duly sworn, deposes
and says:

That he is an attorney at law admitted to
practice before this Court and is the attorney who tried
this case on behalf of the plaintiff.

This affidavit is submitted in opposition
to defendant's motion for a directed verdict or for
judgment N.O.V.

This case was tried before the Court and a
jury on October 12, 13, 14 and 15, 1976. The jury
rendered a verdict in favor of the plaintiff in the
amount of \$60,000.00. Since defendant's motion is
addressed solely to the issue of liability, this affi-
davit is addressed only to that issue.

Plaintiff testified that he was working as
a longshoreman on board the M/V JALAJYOTI at Pier 12,
Brooklyn, New York on January 29, 1974. He testified
that he and the other members of his gang proceeded

AFFIDAVIT OF MARTIN LASSOFF

to the No. 6 Hatch and commenced work in the hatch at about 8:30 A.M. He testified that in the square of the hatch there were some skids of tea and some rugs and that in the inshore wing of the hatch there were more skids of tea stowed one high with a cargo of rugs of different sizes stowed two or three high on top of the skids of tea. He testified that when he took a step backwards to gain his balance to move the rug from the top of the stow into the square of the hatch, the rug sank down into a hole in the stow and his foot went down with the rug causing him to lose his balance and to fall approximately six (6) feet and be injured. He further testified that he never saw this hole before the accident and there was no dunnage or plywood covering the hole.

Joseph Green, a fellow worker of plaintiff, testified that he was working with the plaintiff and that he saw the plaintiff step on the rug and the rug and the plaintiff sink and fall; that there was no dunnage or plywood covering this hole in the stow and there was no dunnage or plywood used in the stow. At the time of the accident the longshoremen did not know of the condition of the stow of cargo of tea as they had not removed enough of the rugs covering same. He testified that he got off the stow and went to plaintiff's assistance and that at all the times the men were working in the hatch an officer of the vessel was down in the hatch with them and as a matter of fact told them to give Ruffino a glass of water.

AFFIDAVIT OF MARTIN LASSOFF

Plaintiff produced a Mr. Saverio Anastasio as a stevedoring expert. Mr. Anastasio testified that he had been a ship's foreman in charge of stevedoring operations on ships for thirty years. He testified that all dunnage and plywood had to be supplied by shipowner and were ship's property and/or if the ship did not have dunnage or plywood that they would procure same from the stevedoring company at an additional charge. He further testified that the use of plywood was controlled by the ship and longshoremen did not and could not use plywood unless the ship specifically ordered it. He also testified that in loading cargo on top of skids of tea it was necessary to have a dunnage or a plywood floor so that the men could walk and work thereon because of holes in the stow, and that stowing cargo of rugs on top of skids of tea without dunnage or plywood made the stow improper and unsafe.

It should be pointed out that this ship arrived in the Port of New York in the unsafe condition that caused the accident and that longshoremen had just commenced work on this cargo; that the condition complained of constituted a hidden trap and a latent defect in the stow of which longshoremen had no way of knowing before discharging down to the skids of tea.

Defendant produced on its own behalf, the Chief Officer of the vessel, a Mr. Rao, who testified that dunnage and plywood were the ship's property and that he had ordered the loading stevedore to put plywood on top of the cargo of tea and supplied or ordered the plywood for such use. He further admitted that it was

AFFIDAVIT OF MARTIN LASSOFF

his duty to see that the cargo was stowed properly, with plywood, in this case, so that it would be safe both for the cargo and the men who had to walk and work on the cargo, including the discharging stevedores; that if plywood had not been used, he would make the stevedore re-stow the cargo and he had the obligation to see that the stevedore used plywood in the stow. He further testified that plywood was used to cover the skids of tea but admitted he did not see it used while the cargo was being loaded. He claimed to have seen the plywood, however, while the cargo was being discharged.

It should be further noticed that the ship's log, which was put in evidence, reported that before this discharge of cargo commenced, the ship's dunnage which was spare dunnage, had to be removed from the ship so that the discharge operations could proceed. It should also be pointed out that nowhere else in the ship's log is there any mention of any removal of dunnage or plywood from the hatch once the discharge commenced and by inference there was none to be removed and none in the hatch. Mr. Rao testified that after the loading operations and en route to New York he inspected the cargo repeatedly seeing nothing wrong with the cargo and that the ship did not run into bad weather or rough seas. The ship's log, however, shows the ship went through rough seas on this voyage.

On direct examination Rao testified that there were 10-12 skids of tea in the square of the hatch and that this covered the entire square. On cross

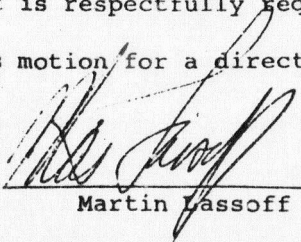
AFFIDAVIT OF MARTIN LASSOFF

examination he conceded that 10-12 skids of tea would not cover the square and he then testified that rugs were stowed on the deck of the hatch from the floor up. The defendant then produced an alleged maritime expert, Captair Wheeler, who testified that this type of cargo of rugs should never be stowed more than 3 high and that admittedly there was room in part of the square not used for the cargo of tea. He further testified that stowing the rugs 7 high, which was what would have had to be done to put the rugs in the place where Rao said they were put, was not proper and would damage the cargo.

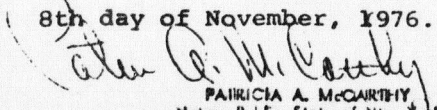
The Court charged the jury as to the applicable law and that shipowner had an obligation to use reasonable care to furnish the plaintiff with a reasonably safe place to work, but to find the shipowner liable the jury had to find that he had actual or constructive notice of the improper stow of cargo. The defendant took no exception to the Judge's charge. By its verdict the jury found that the defendant had or should have had notice of the dangerous condition of the defective stow and that it breached its duty to exercise reasonable care to furnish plaintiff with a reasonably safe place to work. The jury verdict was fair and equitable and in view of the evidence and the Judge's charge, the verdict should not be disturbed.

WHEREFORE, it is respectfully requested that the Court deny defendant's motion for a directed verdict and/or for judgment N.O.V.

Sworn to before me this


Martin Lassoff

8th day of November, 1976.


PATRICIA A. MCCARTHY
Notary Public, State of New York
No. 24-8537165
Qualified in Kings County
Commission Expires March 30, 1978

REPLY AFFIDAVIT OF WILLIAM P. KAIN, JR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

PETER RUFFINO,

Plaintiff,

- against -

REPLY
AFFIDAVIT

75 Civ. 4193
(LPG)

SCINDIA STEAM NAVIGATION CO., LTD.,

Defendant.

-----x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM P. KAIN, JR., being first duly sworn,
deposes and says as follows:

That he is an attorney duly admitted to practice before this Court and is a member of the firm of Haight, Gardner, Poor & Havens, attorneys for defendant herein. This affidavit is submitted in reply to plaintiff's papers in opposition to defendant's motion for a directed verdict or for judgment notwithstanding the jury verdict.

Deponent takes issue with those points raised in the affidavit of plaintiff's counsel upon which deponent's recollection differs and those points which deponent submits are irrelevant to the determination of this motion. However, first it must be pointed out that plaintiff's opposition affidavit on its face establishes no case of notice, actual or constructive, of any defect in the stow of the m/v Jalajyoti in this case. Plaintiff's counsel has pointed to no evidence in the record in any way tending to establish any duty on the part of the shipowner to supervise the loading in India or any custom or practice

REPLY AFFIDAVIT OF WILLIAM P. KAIN, JR.

probative of a standard of care that the shipowner could have allegedly violated while the vessel was loading in India. Indeed, this Court correctly charged the jury, with no objection from plaintiff's counsel, that the shipowner was under no duty to supervise the stevedores either in loading or discharging. Plaintiff's failure to establish actual or constructive notice of the defect during loading is fatal to his case. The evidence was uncontradicted that the men actually working the stow during discharge could not ascertain any defect in the stow between the stow of rugs and the stow of tea until the rugs had been removed. This stow, completed in Calcutta, India, therefore made it impossible for the shipowner to ascertain any alleged defect in the stow between the rugs and the tea. Similarly, such a concealed condition, if it existed, could not have been ascertained while the vessel was at sea, when the vessel's Chief Officer made a general inspection to ascertain whether cargo had shifted. As a result, the evidence from both plaintiff's and defendant's witnesses is uncontradicted that it was impossible to learn of alleged missing plywood or dunnage between the tea and the rugs or a space between the cartons of tea until the rugs had been completely discharged. The evidence is also uncontradicted that the rugs were not completely discharged until after the occurrence of plaintiff's accident. Based on the foregoing, there was no evidence whatsoever of any notice, actual or constructive, to the shipowner of any dangerous condition.

Plaintiff's counsel, in his affidavit, claims that Mr. Green, one of plaintiff's fact witnesses, testified that "at all the times the men were working in

AFFIDAVIT OF WILLIAM P. KAIN, JR.

the hatch an officer of the vessel was down in the hatch with them." This is not deponent's recollection of the testimony. Mr. Green only inserted on cross-examination the off-hand allegation that a ship's officer was in the hatch at the time of plaintiff's accident. At any rate, there was no testimony that an officer of the vessel was down in the hatch at all times during the discharge operation. Moreover, the presence of an officer in the hatch during discharge is of no relevancy to the instant motion. The evidence is uncontradicted, and plaintiff's counsel does not dispute, that it was impossible to ascertain any alleged defect in the stow from the time the stow of rugs was placed over the tea in India until the rugs had been discharged in New York after plaintiff's alleged accident.

Plaintiff's counsel also points to Mr. Anastasia's testimony concerning the loading of cargo. It is deponent's distinct recollection that Mr. Anastasia's entire testimony concerning stevedore operations was confined to New York because he had absolutely no experience with loading operations in India. Mr. Anastasia's testimony therefore is no evidence whatsoever as to any custom and practice or standard of care at the loading port of Calcutta, India.

Plaintiff's counsel's recollection of Capt. Rao's testimony also differs from the recollection of the deponent. Capt. Rao did not testify that dunnage and plywood were provided by the ship. Rather, he testified that another independent contractor in India provided plywood for use by the independent loading stevedore. Plaintiff's counsel's claim that Capt. Rao did not see the plywood used to cover the skids of tea during loading is

AFFIDAVIT OF WILLIAM P. KAIN, JR.

true. However, Capt. Rao was not down in the No. 6 hatch of the Jalajyoti in Calcutta observing the independent stevedores doing its work and had no duty to do so.

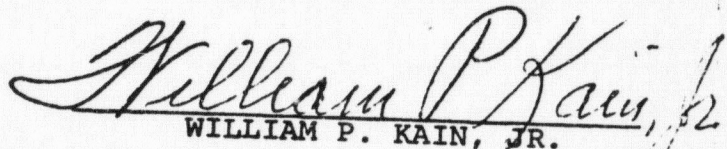
Plaintiff's claims concerning the ship's log entries as to discharge of dunnage and weather, as well as his claims as to Capt. Wheeler's testimony, are entirely irrelevant to the instant motion. For purposes of this motion, it must be assumed that there was indeed no plywood floor between the stow of rugs and the stow of tea. As a result, plaintiff's arguments based on an interpretation of the ship's log, which interpretation deponent disputes, are only probative of facts which must be assumed for purposes of this motion. Plaintiff's counsel's allegations as to Capt. Wheeler's testimony are also disputed by deponent and are also irrelevant to this motion. Capt. Wheeler did not testify that the stow of rugs as described by Capt. Rao was improper. He merely testified that based on his experience, he would prefer a stow not more than three feet high. Nonetheless, the dispute between plaintiff's counsel and deponent as to Capt. Wheeler's testimony is in no way relevant to the determination of defendant's motion.

In conclusion, it cannot be emphasized too strongly that plaintiff took no exception to this Court's charge that the shipowner had no duty to supervise stevedoring operations. Plaintiff's counsel's acquiescence in this charge was necessary because there was no evidence whatsoever to the contrary in this case. The evidence was uncontradicted that there was no actual notice of any dangerous condition in the stow of cargo. Given no duty on the part of the shipowner to supervise the loading

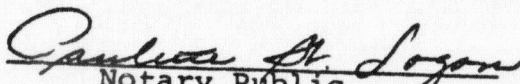
AFFIDAVIT OF WILLIAM P. KAIN, JR.

stevedore or participate in loading, there was likewise no evidence upon which constructive notice of the alleged defect could be grounded. As a result plaintiff's complaint should be dismissed for failure to establish a case of negligence on the part of the shipowner.

WHEREFORE, it is respectfully requested that this Court grant defendant's motion for a directed verdict and judgment notwithstanding the jury verdict.


WILLIAM P. KAIN, JR.

Sworn to before me this
11th day of November, 1976.


Notary Public

PAULETTE W. LOGAN
Notary Public, State of New York
No. 204600337
Qualified in Westchester County
Cert. filed in Westchester County
Commission Expires March 30, 1978

DECISION OF HON. LEE P. GAGLIARDI, D.J.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 PETER RUFFINO, :

5 Plaintiff, :

6 v. :

75 Civ. 4193

7 SCINDIA STEAM NAVIGATION CO., LTD., :

8 Defendant :

9 -----x

10 New York. N.Y.

11 November 30, 1976 5:00 PM

12 BEFORE:

13 HON. LEE P. GAGLIARDI,
14 District Judge

15 APPEARANCES:

16 ZIMMERMAN & ZIMMERMAN, Esqs.,

17 Attorneys for plaintiff

18 BY: MARTIN LASSOFF, Esq., of Counsel.

19 Haight, Gardner, Poor & Havens, Esqs.,

20 Attorneys for defendant

21 BY: WILLIAM P. KAIN, JR, Esq., of Counsel.

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DECISION OF HON. LEE. P. GAGLIARDI, D.J.

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THE COURT: Gentleman, I have before me a motion of the defendant to set aside the jury verdict in this case and it is my firm opinion that there was no testimony presented which would permit an inference that the ship owner had any notice, actual or constructive, of the claimed defect as alleged in the complaint or on the basis of the testimony adduced at the trial.

Accordingly, the motion for a directed verdict on which decision was reserved at the conclusion of the plaintiff's case is granted. The motion upon which decision was reserved, the defendant's motion for a directed verdict at the conclusion of the entire case, on which decision was reserved is granted.

Were I in error as to the decision which I have rendered herein, I would set aside the verdict as against the weight of the credible evidence. Therefore, I direct that judgment be entered notwithstanding the verdict, in favor of the defendant.

It is so ordered.

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ORDER AND JUDGMENT

SOUTHERN DISTRICT OF NEW YORK

DEC 13 1976

PETER RUFFINO,

Plaintiff,

- against -

SCINDIA STEAM NAVIGATION CO., LTD.,
Defendant.ORDER AND JUDGMENT
75 Civ. 4193 (LPG)

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Lee P. Gagliardi, United States District Judge, and a jury, on October 12, 13, 14 and 15, 1976, and the jury having returned a verdict in favor of the plaintiff, and the Clerk having entered Judgment No. 76941 on the jury verdict on October 20, 1976, and the defendant having moved to set aside the jury verdict, and for judgment notwithstanding the verdict, and the Court, after due deliberation having granted said motion, it is

ORDERED, that the Judgment of this Court No. 76941 in favor of the plaintiff Peter Ruffino against defendant Scindia Steam Navigation Co., Ltd. in the amount of \$60,000 be and the same hereby is vacated, and it is further

ORDERED and ADJUDGED, that the complaint of the plaintiff Peter Ruffino against defendant Scindia Steam Navigation Co., Ltd. be and the same hereby is dismissed on the merits with prejudice and costs.

Dated: New York, New York
December 10, 1976

U. S. D. J.

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JUDGMENT ENTERED - 12/13/76 MICROFILM

DEC 13 1976

CLERK

Two (2)
Service of three (3) copies of
the within Joint Appendix is
hereby admitted this 19 day
of March, 1977

Attorney for

two copies
COPY RECEIVED BY
MANAGING ATTORNEYS OFFICE
HAIGHT, GARDNER, POOR & HAVENS

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